
To	Regulatory Sub-committee
From	Summer Salmon Senior Planner
Date	22 November 2017
Approved By	Ella Makin – Consents Team Leader
DWS Document Set #	
Application	SUB0009/17
Report Title	Section 42A Report on a publicly notified resource consent application by Te Kauwhata Land Limited to undertake a seven-staged subdivision to create 163 residential lots, nine lots to vest as road, 16 access lots, two lots for local purpose reserves for drainage and one lot for recreation reserve; and, concurrent land use consent to undertake earthworks and construct four show homes (commercial activities) within consented lots and blanket consent to enable different building coverage and impervious surfaces within consented lots.

Executive Summary

The subject site is situated at 24 Wayside Road, Te Kauwhata in the Te Kauwhata West Living Zone and within the Waikato River Catchment Area.

The subdivision application seeks to undertake a subdivision to create 163 residential lots within seven stages within the Te Kauwhata West Living Zone. Lots will vary in size from 569m² to 962m². In addition to the residential lots, 16 jointly owned access lots (JOAL's), a recreation reserve to vest, two drainage reserves to vest and roads to vest will also be created. A summary of each stage is shown in the table below.

Land use consent is sought for the following:

- (1) To construct four show homes within four of the consented subdivision lots; being consented lots 1, 2, 124 and 165. Show homes are classified as a Commercial Activity in the District Plan under Rule 21.10.2 and therefore a discretionary activity status is applied to that activity subject to compliance with relevant performance standards. Landuse consent is also required to establish the show homes without onsite services under Rule 21.12;
- (2) Undertake earthworks involved in re-contouring a portion of the recreation reserve ('Hilltop Reserve') on an adjoining property (consented Lot 204 of SUB0153/16 to be vested as recreation reserve);
- (3) Blanket consent to allow for a maximum 30% site coverage within the proposed residential lots (measured against the net site area of each allotment) with a maximum building coverage allowed (irrespective of lot size) of 280m²;

- (4) Blanket consent to allow for a maximum of 50% impervious surfaces of the net lot area of the proposed residential lots regardless of lot size.

The application was lodged with Waikato District Council on 5 December 2016. The activity is provided for as a Non-Complying Activity under the Waikato District Plan (Waikato Section 2013).

The subdivision application is unable to comply with the following District Plan Rules:

21.65: Road Frontage, 21.66: Road Access, 21B.4: Remediation Policy Area, 21B.19: Allotment Size, 21B.20: Rear Allotments, 21B.21: Boundary with Country Living Zone, 21B.22: Building Platform, 21B.23: Earthworks, 21B.24: Onsite Services, 21B.27: Landscaping, 21B.28: Staging, A21: Access and Entrances, A21.A: Road Network – Safety and Functions, A22: provision for connection to land beyond the site; A24: Indicative Roads.

The land use application is unable to comply with the following District Plan Rules:

21.10: Type of Activity, 21.13: Onsite Services, 21.17: Vehicle Movements, 21B.6: Earthworks, 21B.8: Impervious Surfaces, 21B.11: Connection to onsite services, 21B.12: Building Coverage.

Due to the Applicant refusing to provide further information requested under s92(1) of the Resource Management Act 1991 (the Act), the application was fully notified pursuant to section 95C of the Act. During the submission period, 13 submissions were received; nine were in opposition, three were in support and one was neutral.

The following report provides an assessment of the proposal against the requirements of section 104, 104B and 104D of the Act, including the actual and potential effects of the proposed activity on the environment, an assessment of the relevant plan provisions and Part 2 matters. The report contains a recommendation to the Commissioner on whether or not consent should be granted.

On the basis that the landscape and visual amenity effects and urban design effects are considered to be more than minor and that, the proposal is, on balance contrary to relevant plan provisions, and does not promote the purpose of the Act, it is my recommendation that the proposal should be refused in reliance on Sections 104(1)(a) and (b) of the Act.

However, the conclusions reached and recommendations made in this report are not binding on the Commissioner and it should not be assumed that the Commissioner will reach the same conclusions or decision after having considered all of the evidence. If the Commissioner does not agree with my assessment under section 104(1) and considers that the proposal can be granted, I have provided recommended conditions of consent for reference.

Applicant:	Te Kauwhata Land Limited
Property Address:	24 Wayside Road TE KAUWHATA
Legal Description:	LOT 306 DP 495940 comprised in Computer Freehold Register 729040
Operative Plan	Waikato District Plan (Waikato Section) 2013
Activity Status:	Non-Complying
Zoning:	Living Zone Te Kauwhata West Recreation Zone
Policy Area:	Indicative Roads, Remediation Policy Area, Segregation Strip, Te Kauwhata Structure Plan Boundary, Waikato River Catchment, Walkway, Cycleway, Bridleway
Proposal:	Undertake a seven-staged subdivision to create 163 residential lots, nine lots to vest as road, 16 access lots, two lots for local purpose reserves for drainage and one lot for recreation reserve; and, Concurrent land use consent to undertake earthworks and construct four show homes (commercial activities) within consented lots and blanket consent to enable different building coverage and impervious surfaces within consented lots.

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1.0 INTRODUCTION

Pursuant to s88 of the Resource Management Act 1991 (the Act), Waikato District Council (WDC) has received an application from Chris Dawson of Bloxam Burnett & Olliver (the Agent) on behalf of Te Kauwhata Land Ltd (the Applicant) for subdivision consent and a land use consent.

1.1 Proposal

Subdivision Proposal

The proposal seeks to undertake a subdivision to create 163 residential lots within seven stages within the Te Kauwhata West Living Zone. Lots will vary in size from 569m² to 962m². In addition to the residential lots, 16 jointly owned access lots (JOAL's), a recreation reserve to vest, two drainage reserves to vest and roads to vest will also be created. A summary of each stage is shown in the table below.

Stage	Total Area (ha)	Lots Created
1A	2.7201	22 residential lots (Lots 1-15, Lots 157-163) Road to vest (Lots 200 & 201) Local Purpose Reserve - Drainage (Lot 202) Balance lot (Lot 300)
1B	2.895	31 residential lots (Lots 16-44, Lots 155-156) Road to vest (Lot 205) 2 x JOAL (Lots 203 & 204) Balance Lot 301
2	4.0088	41 residential lots (Lots 45-80) Road to vest (Lot 212) 6 x JOAL (Lots 206-211) Balance lot (Lot 302)
3A	1.9243	14 residential lots (Lots 81-90 and Lots 146-149) Roads to vest (Lot 215 & 216) Recreation Reserve (Lot 214) JOAL (Lot 213) Balance lot (Lot 303)
3B	2.5418	26 residential lots (Lots 91-107) Road to vest (Lot 221) Local Purpose Reserve Drainage (Lot 220) 3 x JOAL (Lots 217-219) Balance Lot (Lot 304)
4A	1.5194	17 residential lots (Lots 112-126 and Lots 133-134) Road to vest (Lot 226) 2 x JOAL (Lots 223 & 224) Balance Lot (Lot 305)
4B	0.9107	12 x residential lots (Lots 108-111 and Lots 127-136) Road to vest (Lot 227) 2 x JOAL (Lots 222 & 225)

Details of the subdivision are as follows:

Roading

The subdivision will require the creation of local roads that are to be vested in WDC. A main collector road (shown as Road A on the scheme plans) will intersect with Wayside Road and provide frontage to lots. Local roads are proposed to provide individual access to lots. 16 jointly owned access lots are proposed for access to rear lots.

Water Supply

Council reticulated water is available within the location of the subject site. It is proposed that new lots connect to Councils reticulated water supply.

Effluent Disposal

Council wastewater reticulation is to be constructed to cater for future development of the subject site. It is anticipated that infrastructure will be in place prior to dwellings being built within new lots. The local purpose reserve (Lot 202) shall house a pump station that will serve new lots created within the subdivision, and future development within neighbouring properties.

Stormwater Management

No Council stormwater reticulation is provided within Te Kauwhata West. It has been identified that there are two separate catchments for stormwater, each is proposed to contain stormwater treatment ponds discharging either directly to a tributary or to the adjacent property (Jetco) drain. All individual lots within the site shall contain rainwater tanks designed to meet the 10% AEP event before discharge into road reserve reticulation. Vegetated swales are incorporated into the road design to decrease peak flow velocity and direct flow to three stormwater ponds before discharge. Artificial overland flows are created via the elevated lots and from soakage systems draining to the existing road network.

Building Platforms

31 of the proposed lots cannot achieve a compliant building platform. For 27 of these 31 lots, the Application has not demonstrated a permitted dwelling of at least 200m². Land use consent has not been sought for the 27 lots that cannot comply.

Reserves

A portion of the Hilltop Reserve identified within the Te Kauwhata Structure Plan is within the site. The subdivision proposal includes this strategically located reserve within its design. The area around the hilltop (2517m²) will be vested as recreation reserve.

Two local purpose reserves (LPR) for drainage are proposed and located on the lowlands of the site. Each reserve will contain a stormwater pond and one (Lot 202) will also contain a wastewater pump station.

Contaminated Land

Historically, the subject land has been used as an experimental farm, established in Te Kauwhata in 1886, for researching different crops, including vegetables, fruit trees, berry fruits and grapes. These are classified as HAIL activities.

Easements

Water easements in gross are required over public water reticulation in 'laneway' lots (private roads). Wastewater easements in gross are required over public wastewater reticulation which is to be located through private properties. Stormwater easements in gross are required for rights to drain stormwater through private properties. ROW easements are required for a number of lots gaining access of 'laneways'.

Land Use Consent

Land use consent is sought for the following:

- (5) To construct four show homes within four of the consented subdivision lots; being consented lots 1, 2, 124 and 165. Show homes are classified as a Commercial Activity under the District Plan under Rule 21.10.2 and therefore a discretionary activity status is applied to that activity subject to compliance with those other relevant performance

standards. Landuse consent is also required to establish the show homes without onsite services under Rule 21.12;

- (6) Undertake earthworks involved in re-contouring a portion of the recreation reserve ('Hilltop Reserve') on an adjoining property (consented Lot 204 of SUB0153/16 to be vested as recreation reserve);
- (7) Blanket consent to allow for a maximum 30% site coverage within the proposed residential lots (measured against the net site area of each allotment) with a maximum building coverage allowed (irrespective of lot size) of 280m²;
- (8) Blanket consent to allow for a maximum of 50% impervious surfaces of the net lot area of the proposed residential lots regardless of lot size.

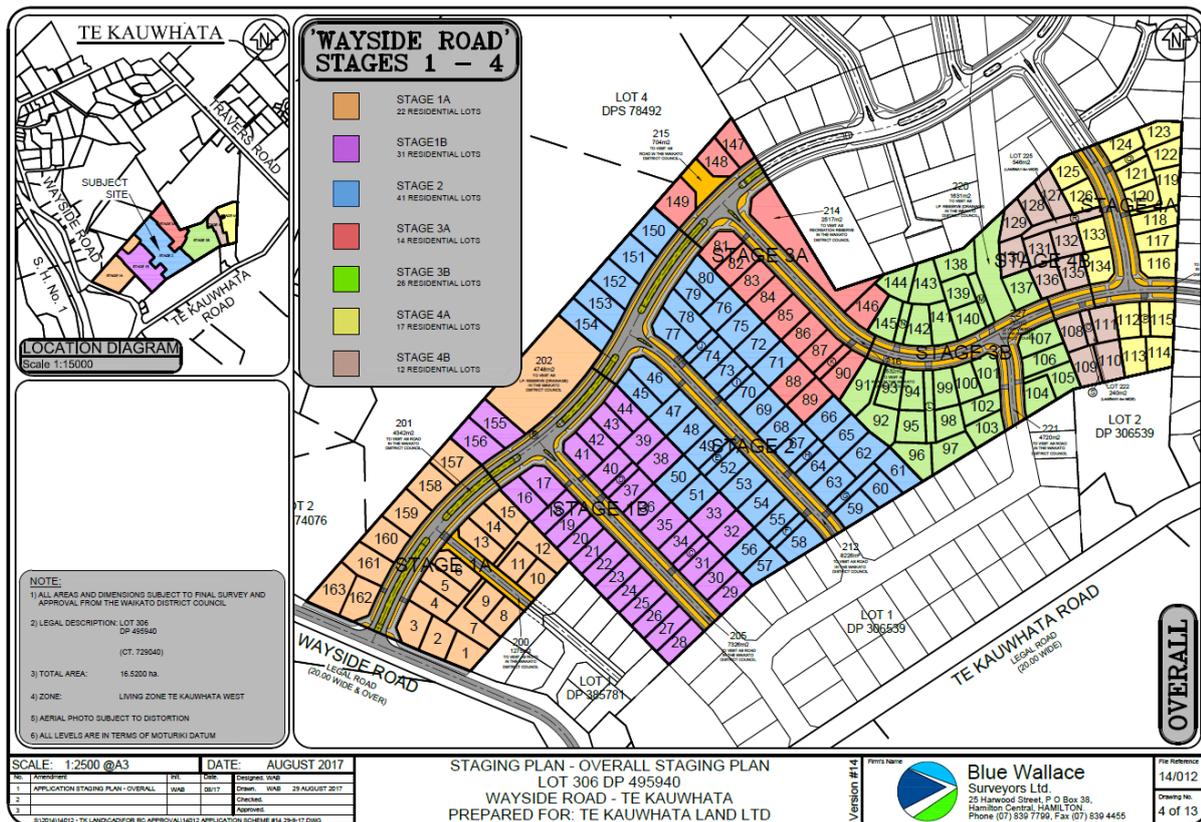


Figure 1: Subdivision scheme plan and proposed staging of the subdivision

1.2 Description of Site

The subject site is located at 24 Wayside Road west of the Te Kauwhata main town centre. The site sits at the interface between the 'Country Living' zone and the more centralised 'Living' zone, and is just near the exit to Te Kauwhata from State Highway 1.

The site is approximately 16.52ha in size and of an irregular shape, lying in an area zoned as 'Living Zone Te Kauwhata West' in the Waikato District Plan.

The site is bounded by Wayside Road to the South-West. This is the only boundary abutting a road. The South-Eastern edge is adjacent to land bounding Te Kauwhata Road, which has draft plans for future intensification by a developer. One half of the North-Eastern edge is adjacent to a large private lot containing vineyards and bordered with shelter belts. Half of the Northern side is adjacent to lifestyle blocks and small agricultural lots which form part of the 'Countryside Living' zone. The other half of the North-Eastern edge and the Northern side are adjacent to a similar sized site which is currently being developed into residential lots as part of the 'Living Zone Te Kauwhata West' zoning.

Currently the proposed site is being used as an orchard with a small adjoining processing yard.

The site is located in the Lower Waikato basin, approximately 1.8km northeast of the Waikato River. The proposed subdivision is approximately 1.5km west of the Te Kauwhata Township. The surrounding areas consist of farmland and lifestyle properties.



Image 2 – Aerial of site and surrounding area

1.3 History

Historically the subject land was zoned Country Living. Subdivision consent to create 28 rural-residential lots and one road to vest on the subject land was granted in November 2007 (Ref: SUB0034/08). The subdivision was not given effect to and expired.

As part of the Te Kauwhata Structure Plan process, the subject land was rezoned Living Zone Te Kauwhata West. Subdivision consent to create 130 residential lots, five lots to vest as road, three access lots, two lots for local purpose reserves for drainage and one lot for recreation

reserve was granted in September 2015 (see approved scheme plan in Image 3 below) – Council Application Number: SUB0163/14.

A variation under s127 was applied for and granted on 25 November 2016. The s127 application consented to an additional stage of development, an increase in the size of a local purpose reserve, amend conditions to clearly define the timing of remediation, bulk and construction earthworks and provide for a transfer of ownership of a strip of land previously included in the subdivision to a neighbour – Council Application Number: SUB0163/14.01.

The consent holder (previously Silverspur Ltd (SS) now Te Kauwhata Lands Ltd (TKL)) has commenced remediation earthworks on the site under this consent.

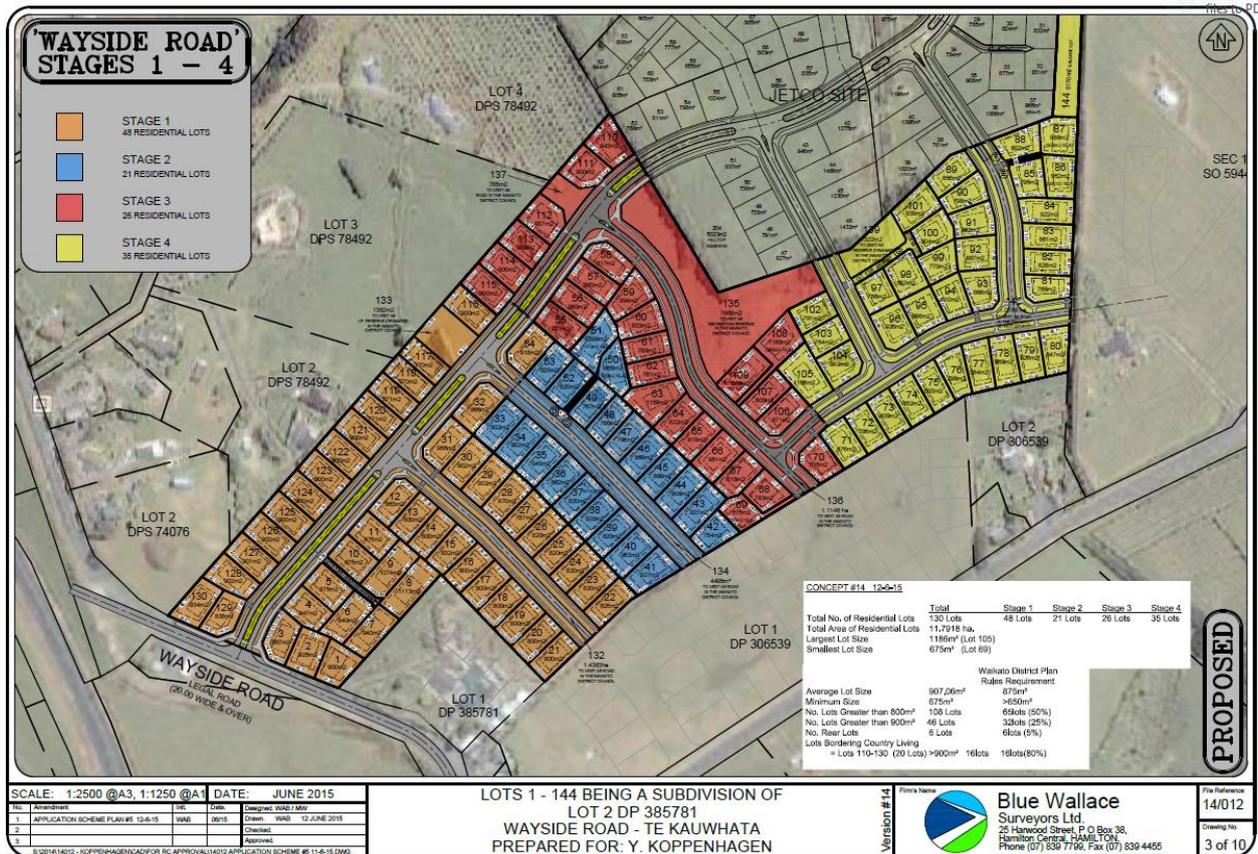


Image 3 – Layout of Silverspur Subdivision

2.0 STATUS OF ACTIVITY

2.1 Waikato District Plan

The Waikato District Plan was made operative on 5th April 2013.

An assessment of the proposal's compliance with the relevant rules of the Operative District Plan has been completed and appended in APPENDIX A of this report.

Overall, the application is deemed to be a Non-Complying Activity under the Operative District Plan.

3.0 PROCESS MATTERS

3.1 Key Dates

A summary of key dates for this application are as follows:

	Action	Date
1	Application received	21 July 2016
2	Applicant agrees to extension of time under s37 of the Act to allow for further discussions/meetings about application before completing s88 check.	1 August 2016
3	Application returned under s88 of the Act	5 September 2016
4	Application to establish and operate a sand quarry in the Rural Zone as a discretionary activity received and accepted	5 December 2016
5	Council advised Applicant of its intent to commission a person to prepare a report regarding landscape, visual amenity and urban design effects pursuant to s92(2) of the Act	19 January 2017
6	Applicant agrees to commission of person to prepare a report	28 February 2017
7	Council received s92(2) report	4 April 2017
8	Application put on hold pursuant to s92(1) of the Act	13 April 2017
9	Applicant provides s92(1) information and amends application to remove one residential lot, increase the size of the drainage reserve and create a reduced width public road in place of a private road, provide an alternative option for the Hilltop Reserve.	24 July 2017
10	Council advises Applicant of recommendation to publicly notify subject to sign off by delegated authority.	23 August 2017
11	Applicant agrees to extension of timeframes under s37 of the Act and advises of a further amendment to the application which removes one residential lot to allow further increase in size of the drainage reserve.	6 September 2017

12	Council request further information pursuant to s92(1) (second request) related to amended application.	15 September 2017
13	Applicant advises they refuse to provide s92(1) information and that they wish to proceed pursuant to s95C of the Act.	18 September 2017
14	Applicant provides some of the information requested as part of the second s92 request.	27 September 2017
15	Application publicly notified pursuant to s95C for refusal to provide further information	1 October 2017
16	Submissions Close	30 October 2017

3.2 Technical Comments

This proposal was reviewed by Mr Peter Henderson, Council's Land Development Engineer (LDE). His report includes comment with regards to water supply, stormwater and wastewater matters related to this proposal. He also reviewed the Traffic Impact Assessment submitted by the Applicants Technical Expert and provides comments on this matter. A copy of his report has been included in APPENDIX B.

Landscape and Visual Effects have been assessed by Lisa Jack of Harrison Grierson. A copy of this assessment has been included in APPENDIX C.

Urban Design Effects have been assessed by Lauren White of Harrison Grierson. A copy of this assessment has been included in APPENDIX D.

Traffic Matters have been assessed by the Applicants Technical Expert, Mr Alasdair Gray of Gray Matter Ltd. A copy of his review has been included in APPENDIX E.

4.0 NOTIFICATION AND SUBMISSIONS RECEIVED

4.1 Notification Decision

The application was publicly notified pursuant to Section 95C of the Act because the Applicant refused to provide further information requested under s92(1) of the Act. A copy of the Notification Decision is appended within APPENDIX F.

The application was publically notified on 2 October 2017 and submissions closed on 30 October 2017.

4.2 Submissions Received

A total of 13 submissions were received during the submission period.

One submission was received after the submission period from Nga Muka Development Trust. This submission was received one day late on 31 October 2017. I will address this in section 4.3 below.

Of the 13 submissions received, nine were opposed to the proposal. Three were in support and one was neutral. Of these submissions, 6 parties wish to be heard in support of their submission. Five submitters advised that if others make a similar submission, they may consider making a joint case at the hearing. None of the five parties had confirmed at time of writing this report. A summary of submissions and copy of submissions is attached in APPENDIX G.

The key issues raised by submitters are described below:

- Allotment Sizes;
- Boundary Width of Lots that back onto Country Living Zone properties;
- Number of Rear Lots;
- Heights of Retaining Walls;
- Cultural, Environmental and Social Impacts;
- Traffic Noise from Waikato Expressway Traffic;
- Staging of the Subdivision;

Other matters raised include the following:

- Water runoff & changes to natural overland flows;
- Boundary Fencing between Living and Country Living Zone boundary.

4.3 Late Submissions

As identified above, one submission was received on 31 October 2017 (one day after close of submissions). The submission was received from Nga Muka Development Trust.

The Commissioner will need to resolve whether to accept or reject this late submission in accordance with section 37 of the Act (extension of timeframes) after taking into account the following matters specified in subsection (4):

- (a) The interests of any person who, in its opinion, may be directly affected by the extension; and*
- (b) The interests of the community in achieving adequate assessment of the effects of any proposal ...;and*
- (c) Its duty under section 21 to avoid unreasonable delay.*

In this context, the following are important considerations:

- The submission was only just out of time (one day late)
- The submission relates to cultural effects associated with the Application. It is important for the appropriate mana whenua group to express their concerns as they are the experts in this field in relation to the subject area. Further this matter has not been raised by any other submitter.

In this circumstance, my recommendation is to extend the timeframe to allow receipt of the submission (pursuant to s37A RMA) and thereby enable the above submission to be accepted.

The Applicant has asked that I advise in my report that they will also be recommending the late submission be accepted. They will outline their reasons within their report.

5.0 RMA CONSIDERATIONS

This section of the report outlines the statutory framework of the Resource Management Act 1991 under which the assessment of the application will be undertaken. As the proposal is a Non-Complying Activity, Council can only grant consent if it is satisfied that either:

- (a) The adverse effects of the activity on the environment will be minor; or

- (b) The application will not be contrary to the objectives and policies of the Waikato District Plan. If one of the two gateway tests is passed, Council has jurisdiction to go on and consider the merits of the application under s104.

For convenience, this report will first assess the application against section 104, before turning to the assessment under section 104D.

5.1 Section 104

Matters to be considered by the Council when assessing an application for resource consent under s104 of the Act include, subject to Part 2, any actual and potential effects on the environment, any relevant objectives, policies, rules or other provisions of a Plan or Proposed Plan and any other matters considered necessary (i.e. under s104(1)(c)).

The following sections of this report will assess the proposal's effects on the environment; the relevant provisions of the Waikato District Plan (Waikato Section), the Waikato Regional Policy Statement and the Waikato Regional Plan and other relevant regulations; and other matters considered necessary.

5.2 Permitted Baseline

Section 104(2) contains the statutory definition of the permitted baseline. This section specifies that when forming an opinion with regard to the actual and potential effects on the environment of allowing the activity, the consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect. Application of the permitted baseline is a matter of discretion for the consent authority. If it is applied, permitted effects cannot then be taken into account when assessing the effects of a particular resource consent application. The baseline has been defined by case law as being non-fanciful (credible) activities that could be permitted as of right by the District Plan. I will address the permitted baseline further in Section 6.0 below.

5.3 Part 2 Matters

All of the above considerations under section 104 are subject to Part 2 of the Act – purpose and principles (sections 5, 6, 7 and 8). The key matter when considering this application will be the Act's single purpose as set out in section 5, which is to promote the sustainable management of the natural and physical resources.

A full discussion and assessment of all Part 2 matters and a final overall broad judgement of whether the proposal promotes this part of the Act is set out in later sections of this report.

6.0 PERMITTED BASELINE ASSESSMENT

The effects associated with subdivision within the Living Zone are not permitted and therefore no permitted baseline is considered applicable to the subdivision proposal.

The land use application seeks to undertake earthworks within a neighbouring property to shape the Hilltop Reserve, to construct four showhomes within the notional boundaries of four of the lots created under the subdivision, and blanket consent for all residential lots created as part of the subdivision to change the permitted levels of building coverage and impervious surfaces per lot.

The following effects associated with these above land use activities are permitted within the Te Kauwhata West Living Zone:

- One dwelling house per certificate of title;
- Earthworks up to:
 - 100m³ within a single site in a calendar year;
 - 400m²,
 - 1.5m batter height.
- Retaining walls that are not part of a building foundation not exceeding:
 - a height of 0.5m within 3m of a road boundary;
 - 1.5m elsewhere and at least 1.5m from the boundary.
- Retaining walls that are part of a building foundation not exceeding 2.4m in height;
- Building coverage of up to:
 - 25% net site area for lots 650m² to 700m²;
 - 35% net site area for lots 700m² or greater.
- Impervious surfaces up to:
 - 35% on lots with net site area of 650m² and less than 700m²;
 - 40% on lots with net site area of 700m² or greater.

I do not consider that the effects associated with most of the activities listed above are within the permitted threshold in relation to this proposal. Whilst one dwelling per site is a permitted activity, the proposal seeks to create a number of undersized lots which would eventually allow for a higher number of dwellings (thus higher level of density) to be constructed within an area that is not anticipated in the District Plan. Impervious surfaces up to 50% within all lots and the extent of earthworks proposed as part of the proposal is considered to be well outside the permitted threshold. Accordingly, these effects have not been disregarded. Even if I did exercise my discretion to apply the permitted baseline in respect of these effects, it would, in practical terms, be extremely difficult to isolate those particular effects from the remaining effects.

By virtue of creating so many undersized lots the overall building coverage across the site is likely to be similar or less than what could be permitted by the District Plan rule. This is because the District Plan utilises a percentage area basis for site coverage. For this reason the effects associated with a 30% building coverage limit for all lots across the site are considered to be within the permitted threshold. Accordingly, the effects associated with this level of building coverage have been disregarded.

7.0 EXISTING ENVIRONMENT

The Existing Environment

Case law has held that the 'environment' upon which the effects are to be assessed is the existing and the reasonably foreseeable future environment (that is, the future state of the environment as it might be modified by permitted activities under the District Plan and unimplemented resource consents, where it appears likely that these consents will be implemented).

In the present context, the existing environment surrounding the site is of mixed use. It comprises a mixture of residential (existing and/or consented), lifestyle and rural activities. The site is in close proximity to the Te Kauwhata sub-station and the Waikato Expressway (especially the newly constructed Te Kauwhata off-ramp).

Also for consideration is the unimplemented (with the exception of earthworks which have commenced) SS subdivision resource consent for 130 residential lots within the subject site. In this case, one of the drivers for the new subdivision application was the fact that following detailed design it was found that a number of retaining walls, in excess of what was consented, would be required to be constructed (i.e. approximately an additional 23 retaining walls).

Under the subdivision rules of the District Plan, any retaining walls that are not part of a building foundation are permitted if they:

- do not exceed 0.5m in height within 3m of a proposed road boundary, and
- do not exceed 1.5m in height elsewhere on a proposed allotment and are at least 1.5m from a proposed boundary.

As part of the SS consent, the effects of constructing 3 retaining walls up to 3m in height were assessed and consent was granted on that limited basis (i.e. for 3 retaining walls).

From the retaining wall plan it appears that all of the 23 additional retaining walls would need consent (and possibly the 3 consented walls given they are now significantly higher). As such, it appears the Applicant can no longer give effect to the SS subdivision as consented. It therefore follows that the SS subdivision can no longer form part of the existing environment because it cannot be implemented in practice. Council has never assessed the effects associated with the number, height and location of the detailed design for the retaining walls because consent for these walls was never applied for as part of the SS application.

In response to my determination regarding the existing environment, the Applicants Agent argues that the layout and the overall yield of the SS subdivision have been consented and those aspects of the consent form part of the existing environment. I disagree with this statement as the Applicant has not demonstrated that the density of lots consented under the SS proposal (i.e. 130 lots) can be achieved without creating effects that are unacceptable. Notwithstanding this, case law states that the environment consists of unimplemented resource consents, where it appears likely that these consents will be implemented. The SS consent cannot be implemented because the additional retaining walls require further consent and for this reason, I do not consider the unimplemented SS resource consent forms part of the existing environment.

I note that the application has been assessed by the Applicant on the basis that the unimplemented SS consent forms part of the existing environment. However, that assessment overlooked the fact that the detail design for the subdivision requires 23 retaining walls that were not consented as part of that subdivision and remain unconsented.

In the case that the Commissioner disagrees with my findings and determines that the unimplemented SS consent does form part of the existing environment, I have assessed, and asked my experts to assess, the effects of the proposal that go beyond the effects of the SS consent so that the Commissioner can make a determination on this basis if required.

8.0 ASSESSMENT OF EFFECTS ON THE ENVIRONMENT– S104(1)(a)

As the proposal is assessed as a Non-Complying Activity, Council's assessment of effects is not restricted to any matters. The proposed activities adverse effects on the environment are categorised below and have been determined from an assessment of the application and supporting documents, further information received and comments from technical specialist, both external and within Council, and with reference to the submissions.

The actual and potential effects of the subdivision and land use activities on the environment are those effects related to:

- Positive Effects
- Landscape and Visual Effects;
- Amenity & Urban Design;
- Geotechnical Effects & Liquefaction;

- Earthworks;
- Land Transport & Traffic Safety
- Servicing
- Stormwater Management
- Effects of the Proposed Staging of the Subdivision;
- Contaminated Land;
- Ecological Impacts

Where relevant, the assessment identifies whether actual and potential effects can be avoided, remedied or mitigated with the use of appropriate conditions of consent. It is stressed that the presence of any draft conditions is not a predetermination of a positive decision regarding the application. They are simply set out to be of assistance to all parties, in particular the Hearing Commissioner, should they conclude that the application be granted subject to conditions.

It is noted that parts of the assessment of adverse effects undertaken in my notification decision are also relevant under s104(a). For ease of reference, these matters are repeated below.

8.1 Positive Effects

Section 3 of the RMA defines the meaning of effects to include positive effects and it is entirely appropriate to consider whether a proposal creates positive effects on the environment (which includes people and communities). Positive effects that result from a proposal can be balanced against any adverse effects that might not be able to be avoided, remedied or mitigated to an acceptable level and may outweigh such adverse effects and enable a conclusion to be made for a proposal to be approved.

The grant of the proposal will create some positive effects including:

- Provision of residential properties for people and communities, particularly in a challenging property market close to Auckland City;
- The proposal utilises land zoned for residential activities rather than taking rural productive land;
- There is water existing infrastructure for the subdivision to extend and connect into;
- Access to amenities, services and activities within close proximity that people value.

The Applicant will further detail the positive effects of the Application which ultimately will be weighed against the adverse effects of the activity when making a final determination under s104(1)(a).

8.2 Landscape and Visual Effects

The property includes flat areas, gently rolling areas and steep areas within the western and southern portion of the property. District Plan provisions within Chapter 15A highlight that the distinctive landforms and rolling landscape in the Te Kauwhata Structure Plan area contribute to the high amenity values of the area by adding character and open space, while creating views towards natural features including the Whangamarino Wetland and Lake Waikaremoana where it is important that future development responds sensitively to these landscapes. It is envisaged within the district plan provisions that development be designed to take advantage of the features of the site (i.e. vegetation, waterways and terrain). In particular development should seek to limit the extent of earthworks.

The geotechnical reports provided as part of the SS consent highlighted a number of

geotechnical issues (detailed below) which mean it is even more important to minimise earthworks within particular areas within the site.

The topography of the land is challenging in that the site ranges in height from approximately 43 metres to 18 metres and in some areas of the site the necessity to construct roads and building platforms with suitable vertical geometry competes with the desire for minimal earthworks.

The applicant has provided an earthworks gradient plan. In comparison to the SS consent the volume of earthworks is significantly increased; being approximately 82000m³ vs 170,497m³ cut and 138000m³ vs 191,566m³ fill. The area of earthworks also increases by approximately 11000m² and the maximum depth of cut increases by approximately 4.5m within the recreation reserve and 1.8m in other parts of the site. This is partly due to the fact that the Applicant has applied to undertake significant earthworks within the portion of the Hilltop Reserve within the neighbouring property (which was not part of the SS proposal). The effects of earthworks associated with the subdivision and the land use consent (which only relates to the Hilltop Reserve) are considered together as part of this assessment as they are not easily separated from each other.

The application advises that the additional earthworks are required to achieve better road gradients and access points to lots and the Hilltop Reserve, to reduce the need for high retaining walls and to reduce the requirements for secondary earthworks at the time the lots are developed. Regardless, I consider the impacts of the earthworks have the potential to adversely impact upon the landscape and landform beyond the site.

The Applicant has engaged a Landscape Architect, Michael Graham of Mansergh Graham (MG) to provide technical comment on their behalf. MGs report is comprehensive and in summary the report finds that (refer sections 111 to 115 of the report):

- The Te Kauwhata Lands Ltd (TKL) proposal is more appropriate than the SS consent given the sites undulating to steep topography;
- The TKL proposal lessens the effects of the subdivision design and development by lowering the Hilltop Reserve which eases road gradients, improves accessibility and reduces requirements for secondary earthworks as part of dwelling development;
- The irregular nature of the sites overall shape creates significant challenges in creating efficient subdivision design that balances desired urban design principles with efficient block sizes and depths whilst avoiding unnecessary road pavement and other impermeable surfaces and their associated stormwater implications;
- The number of rear lots is more than the desired District Plan standards however through the use of laneways and the introduction of covenanted setbacks on laneway lots these effects will be offset to ensure these lots are attractive accessible and integrate positively into the overall subdivision design;
- The effects on existing character and amenity values are influenced by the fact the site is contained within a restrictive view shed due to its location within a shallow basin landscape and the presence of existing buildings, surrounding mature vegetation and landform, the subdivision represents land within a transition zone between rural and urban land uses, the effects of the proposed development at a macro level will be largely consistent with the effects of the consented SS subdivision.

The report also provides comments regarding the proposed recreation reserve (Hilltop Reserve). The original Application supported reducing the height and spread of the hilltop and creating a smaller man-made knoll in a slightly different location at a lower location with the intent of creating increased accessibility to the reserve, providing more useable (flatter) areas for recreation whilst retaining views to landmarks outside the subdivision. The Application in relation to the Hilltop Reserve has since been amended and the new design retains the actual height of the knoll, with vegetated engineered battered slopes to the top. A safety fence is

proposed around the top portion of the knoll. 50% of the slopes are at a gradient steeper than 20% (1:5). These steeper slopes are proposed to be planted in order to stabilise them, with no pedestrian access other than from Road A.

Council engaged Lisa Jack (Landscape Architect) of Harrison Grierson (HG) to provide technical comment on Councils behalf. The original HG report dated March 2017 did not take into account the amended Hilltop Reserve option but addendum reports address the new design and these reports are also appended to this report (APPENDIX C). Because HG had already assessed the original Hilltop Reserve option before the proposal was amended, comments regarding both options are detailed throughout mine and HGs reporting, in the event this matter arises during the hearing.

HG provide the following comments in relation MG reporting:

- The viewpoints selected and discussed by Mr Graham are a fair representation of the subject site. However, it would have been helpful to identify the extent of the site and any key landforms. The assessment does not identify the knoll as a prominent existing landscape feature to preserve and retain for nearby and adjacent viewpoints looking into/at the development. It also fails to understand the significance of the knoll being zoned for a reserve in the District Plan in relation to the surrounding landscape nearby. As a result negative effects on diminishing or removing this landscape character are not considered.
- The assessment identifies that it would be difficult to perceive views of the increased density inside the lots due to topography and mitigation efforts along the boundary of the 'Countryside Living' zone. However, illustrations of zones of theoretical visibility show these areas would be visible in parts from Mr Graham's view location 2 and particularly from view location 7.
- Mr Graham states that minor changes in configuration do not generally affect the overall view. However, it has been identified in Harrison Grierson's landscape and visual assessment overview that the increased density will cause nearby views of rooftops to merge together. This is considered a cumulative negative effect that will alter the perception of the subdivision's density compared with the surrounding environment.
- It is stated that the scale and form of buildings will be consistent with adjoining residential areas (Eccles Avenue and Totara Roads). However, the zoning of these areas is 'New Residential' and 'Living', which differs from 'Living Zone Te Kauwhata West'. This creates a density that is not in line with the relevant zoning. As a result the subdivision visually extends the township of Te Kauwhata, instead of following the assumed intention of zoning by creating a subdivision which acts as a buffer as viewers move closer to the township.
- By restricting the overall building coverage, there may be physically less area in roof tops, but the smaller footprint size and increase in rear lots (and dwellings in general) results in a finer grain than that anticipated by the District Plan.
- The Retaining Wall Plans provided as part of the SS application do not show any retaining walls in the vicinity of the knoll or along the Country Living Zone (CLZ) boundary (see SS vs TKL Retaining Wall Plans in Figures 7-9 below). It was only at detailed design stage that it was identified that numerous retaining walls would be required, some up to 8m in height.
- Minimising earthworks has been cited as a driver for change, yet cut and fill plans show more work is being carried out in total compared with the SS development as a whole.
- An increase in density for the proposed works through the introduction of more rear lots and associated 'laneways' is not in line with the rules of the 'Living Zone Te Kauwhata West'.

HG in their reports conclude:

- (1) Regardless that the Hilltop has not been identified as a 'Prominent Ridgeline' or within the 'Landscape Policy Area' in the District Plan, other provisions within the District Plan (Chapter 15 and Appendix Og) indicate its importance as an area to be retained as public open space and is a landscape character feature that provides:
 - views out to the wider landscape from within the subdivision, providing residents with visual connections to surrounding environments;
 - views looking into the subdivision seeing the knoll as an elevated green space in a sea of roofs;
 - views as a landmark in the wider surrounding landscape;
 - opportunities to create a breaks (space or vegetation) in the rooftops of the new subdivision, providing further transition between zones.
- (2) Neither option for the Hilltop Reserve is supported. Removal of the knoll and replacement with a smaller engineered mound is not supported from a landscape and visual perspective as it will not maintain the natural character of the site internally, or as a local highpoint regarded from viewpoints outside of the subdivision. The new design, whilst retaining the height of the knoll, the reduced width (spread) of the reserve means that the landform will be altered from that of a natural rolling knoll to a narrow hill with highly engineered contours on the sides of the landform. While providing a green landmark to the greater community, the form will stand out as engineered and distinctly out of place compared to the surrounding rolling landscape. Not only does the new design reduce the overall accessibility to the reserve, it also compromises the integrity of the landscapes natural character and landform.
- (3) In theory a reserve ideally has gentle contours appropriate for passive and active recreation. However, the Structure Plan identifies the knoll as a reserve. This anticipates that slope and outlook will be a significant attribute of the reserve. This does result in some design challenges in terms of access, maintenance and pedestrian safety. However, a challenge in design often makes for an interesting outcome which is unique to the site and augments existing character. Some re-contouring to allow better recreational access is supported, with the provision the general height and size (width) of the knoll is maintained. Mitigation options are available in the form of:
 - terraced retaining
 - planted batters to visually integrate and enhance ecology of the area
 - slope stabilisation and planting for slopes steeper than 1:3.
- (4) It is recommended that retaining walls along the CLZ boundary either be screened with vegetative planting buffers, or preferably removed with the use of planted batters.
- (5) The increased volume of earthworks and depth of cut has a greater landscape and visual effect both during earthworks and in the resulting landform character. Retaining the natural topography of the site where possible results in a changeable topographical character to roads and lots which gives more of a rural feel as opposed to straight, flat or gently sloping land. It is understood that the approved SS subdivision detailed design has engineering constraints (road gradients) which result in bigger retaining structures that will be more notable than those in the TKL proposal. However, the solution for this proposal by the TKL subdivision results in notable earthworks changing the profile of the knoll to avoid any retaining structures on the road boundary and negative visual effects on the landscape character of the area as viewed from the CLZ.
- (6) The cumulative effect of increased density as viewed from both within and into the subdivision is that of an area similar to 'Living' and 'New Residential' zoning. This does not create a sufficient transition to the township, which is assumed to be anticipated by the zoning of the District Plan. While particular attention to lots abutting 'Countryside Living' zones has been made to mitigate this effect, it does not counter the distant views of rooftops that will be apparent from outside the subdivision. Neither does it counter the increased rate of visual change in character when entering and travelling through the subdivision. The District Plan rules clearly indicate that lot sizes are to be larger than those of the nearby 'New Residential' and 'Living' zones, resulting in a transition from

finer grain to larger grain before meeting the CLZ.

- (7) It is noted that the TKL subdivision proposes to restrict the overall building coverage. However, the visual perception of this outcome will have a different result; i.e. the view of an increased number of smaller dwellings with smaller gaps between versus the view of fewer larger houses with larger gaps between. The visual impact of fewer houses with a larger footprint is more consistent with the character of an environment transitioning between rural and urban. This is evident in the size of 'Countryside Living' zone dwellings compared with 'Living' zones in Te Kauwhata township, and it is assumed that the 'Living Zone Te Kauwhata West' is intended to be a step between these two typologies.
- (8) The number of vehicle crossings has an impact both on the perceived density as well as the visual amenity of the street. Additional vehicle crossings to rear lots limit the landscaping and number of street trees that can be provided, which can both contribute to visual amenity. Increased vehicle crossings have the potential to provide higher numbers of traffic movement, could further increase the perception of density. The applicant states "The number of vehicle crossings within the TKL proposal could be reduced if road frontage lots adjoining laneways took primary access from those laneways." This could also be reduced if the number of rear lots in the subdivision was reduced.
- (9) Overall, the proposal is not supported for the following reasons:
 - Visual effects of retaining walls on Countryside Living boundary;
 - Visual effects of the knoll/Hilltop Reserve Design 5A from viewpoints outside the subdivision;
 - Visual effects of landform changes to the height and size (spread) of the knoll/Hilltop Reserve;
 - Visual effects of the perceived density of the TKL subdivision due to rear lots and noncomplying lot sizes.

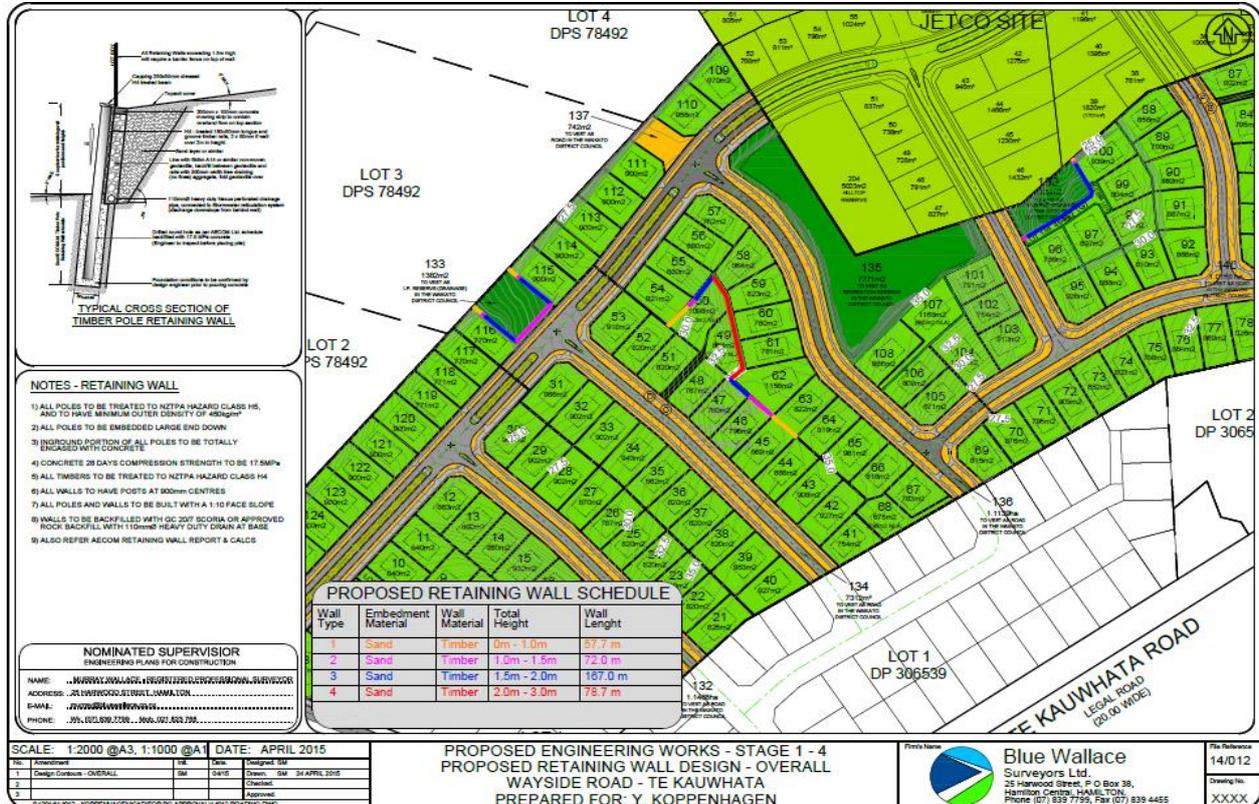


Image 4 – Silverspur Retaining Wall Plan



Image 5 - SS Detailed Design Retaining Wall Plan as drawn by MG (note the plan shows a slightly different layout to the consented SS – i.e. connector road alongside drainage reserve)



Image 6 - TKL Retaining Wall Plan as drawn by MG

Comments

I acknowledge that the topography of the land within the subject site presents challenges in terms of retaining natural contours and achieving minimal earthworks and therefore achieving full compliance with the District Plan provisions. I agree with MG that a proposal to lower the

Hilltop Reserve would ease road gradients, improve accessibility to the reserve and to some lots and reduce requirements for secondary earthworks as part of dwelling development (if the type of development the landowner prefers is development that is not built into the landform). However, the intent of the District Plan provisions are not intended to achieve low gradient roads or flat building platforms. Whilst access to the reserve is important, this aspect is to be considered alongside retaining natural contours which is equally important. The District Plan does not deem one to be more important than the other.

On this site, and having regard to the provisions of the District Plan, in my opinion, the expectation is that roads will be steeper, access points will be steeper and lots are larger to accommodate longer driveways and battering and that development is built into the land. The size and shape of the reserve is not just influenced by how accessible it is but rather by a number of factors as detailed in the HG reports. The two options provided by the Applicant are not supported. Given the likelihood the proposed size and shape of the reserve will result in significant landscape and visual effects, the Applicant should have detailed whether there were any alternative options for the reserve in accordance with Schedule 4 section 6(1)(a) of the Act; even if only to demonstrate that other options did not result in better outcomes.

The MG report concludes that the effects on existing character and amenity values are influenced by the fact the site is contained within a restrictive view shed due to its location within a shallow basin landscape and the presence of existing buildings, surrounding mature vegetation and landform, the subdivision represents land within a transition zone between rural and urban land uses, the effects of the proposed development at a macro level will be largely consistent with the effects of the consented SS subdivision. I disagree with this statement. As identified by both HG and MG, the subdivision is likely to be viewed by others within the wider environment. Notwithstanding this, those who drive through the subdivision (when connections are complete) or those who use the recreation reserve will view the site.

Density & Transition

The original HG report was sent to the Applicant who advised that they disagree with the comments that the reasoning for the larger lot sizes within the TK West Living Zone is to provide a transitional zone between the rural and urban environments. The Applicant quotes references within consent order ENV-2010-AKL-000024 which identifies the Country Living Zone as the buffer and not the TK West Living Zone. The Applicant considers that the HG comments in relation to density and transition are “*based on a flawed understanding of the zone and its functions and are therefore unreliable in making an informed decision of the effects beyond the consented baseline as proposed by TKL [Te Kauwhata Lands]*”.

I have read the consent order (ENV-2010-AKL-000024) and whilst not explicitly stated that the intent of the TK West Living Zone was to buffer Country Living environments from high density living environments, in my opinion, it is clear from the Landscape and Urban Amenity Effects Report and evidence presented at the hearing relating to the Te Kauwhata Structure Plan that this was the case. I attach these documents for reference in APPENDIX I and quote excerpts from these documents below (parts underlined for emphasis) which have led me to my conclusions:

Landscape and Urban Amenity Effects Report by Dave Mansergh of MG

- Urban integration:

“Integration between Te Kauwhata township (existing) and development within the study area is dependent on a number of factors. These include:

(a) Consistency in the general road network pattern, road reserve width and road reserve treatment between old and new areas;

(b) Consistency in the general design and size of development;

- (c) Similarity in site coverage;
- (d) Similarly in curtilage patterns;
- (e) Either achieving general consistency in lot size and shape or achieving appropriate lots sizes in relation to a continuum from urban (smaller) and rural (larger) lots.

The following factors are considered in terms of their effects on the amenity of existing residents of Te Kauwhata and future residents within the study area. Some design interventions will have noticeable implications on either amenity from surrounding locations (e.g. managing the transition from rural to urban), or from within the study area (e.g. lot orientation). Other interventions, such as the provision of street trees will have clear benefits for those both within and surrounding the study area”.

- Transition from Peri-Urban to Rural Land

“The average lot size within the study area (875m²) is considerably smaller than that within the adjoining Country Living Zone. At present, Variation 13 does not address the distribution of lot sizes within the study area or manage the transition from urban to rural. As it stands, there is likely to be an abrupt transition from a relatively dense urban grain within the study area to large lots in the neighbouring Country Living Zone. This is contrary to good urban design practice which identifies transects that gradually transition from greater to lesser density toward the Rural Zone. It is important that both the transition between the study area and adjoining Country Living Zone, and the overall character of the study area are considered to avoid an abrupt clash of rural and urban elements. Establishing larger lots on the boundary between the study area and adjoining Country Living Zone land is one way of managing this transition. This will have the most noticeable effect on those properties in the Country Living Zone, immediately adjacent to the study area. By increasing the lot sizes along the zone boundary, a property within the Country Living Zone could border two 900m² sections rather than three dwellings on 650m² sections. This would noticeably reduce the urban edge and apparent density effects experienced by Country Living Zone residents, easing the transition for rural to urban”.

- Immersive environments

“For Country Living Zone residents on the more distant, elevated land to the north of the study area, the transition between zones at the boundary is less important in terms of amenity than the overall visual character of subdivision within the study area. One of the key concepts of transect planning is the idea of creating immersive environments. Successive immersive environments along a transect are defined by the selection and arrangement of all the components that together comprise a particular type of environment. Each environment (or transect zone) is comprised of elements that keep it true to its locational character'. In this case it is important that for neighbouring Country Living Zone residents that the overriding visual character of the study area is not defined by a sea of roofs. Rather, subdivision should be designed to include natural elements that break up views of dwellings and reflect a more rural flavour of residential development”.

Statement of Evidence of Dave Mansergh

- Key urban design factors (paragraph 56 section (e)):

“...successful integration between the existing township and the proposed Te Kauwhata West Living Zone is dependent on a number of key urban design factors. These include...Either achieving general consistency in lot size and shape or achieving appropriate lots sizes in relation to a continuum from urban (smaller) and rural (larger) lots through “transect planning”

- Transition between zones (paragraphs 58-60):

“The average lot size within the Appeal Area (875m²) is considerably smaller than that within the adjoining Country Living Zone. At present, Variation 13 does not address the distribution of lot sizes within the Appeal Area or manage the transition from urban to rural. As it stands, there is likely to be an abrupt transition from a relatively dense urban grain within the Appeal Area to large lots in the neighbouring Country Living Zone. In my opinion, this is contrary to good urban design practice which identifies transects that transition from “higher” to “lower” density toward the Rural Zone.

In my opinion, establishing larger lots on the boundary between the Appeal Area and adjoining Country Living Zone land is one way of managing this transition. This will have the most noticeable effect on properties immediately adjacent to zone boundary. As a result a property within the Country Living Zone could border two 900m² sections rather than three dwellings on 650m² sections. This would noticeably reduce any urban edge and apparent density effects experienced by Country Living Zone residents, easing the transition from rural to urban.

I consider the transition can be further enhanced by the use of visually permeable fencing between the Te Kauwhata West Living Zone and the Country Living Zones where this does not compromise privacy. This could be managed by maintaining existing rural post and wire fencing at the boundary, and a recommendation within the Design Guides that privacy fencing is established closer to dwellings where necessary”.

- Visual integration (paragraphs 70-74):

For Country Living Zone residents on the more distant, elevated land to the north of the Appeal Area [includes the subject site], the transition between zones at the boundary is likely to be less important in terms of amenity than the overall visual character of subdivision within the Appeal Area. In order to reduce the likelihood of an inappropriate transition between zones and avoid homogenous development character from occurring, visual integration techniques should be adopted.

In my opinion, it is important for neighbouring Country Living Zone residents that the overriding visual character of the Appeal Area is not defined by a sea of roofs. Rather, subdivision should be designed to include natural elements that break up views of dwellings and reflect a more rural flavour of residential development.

While street trees are not a prominent feature of the main residential district of Te Kauwhata (east of the Commercial Centre), their widespread use within the Appeal Area is considered appropriate in terms of enhancing the transition from urban to rural.

I consider that street trees should be planted within the road reserves at approximately 20m intervals to help break up views of built form and help new development to visually integrate with surrounding rural shelter planting (Refer to Figures 17 to 20 at Tab B16 Agreed Bundle Vol 2).

In my opinion it is also important that lots are of sufficient size to allow residents to plant large trees. At present building coverage of 35% will be permitted on lots as small as 650m² within the Appeal Area. If this maximum site coverage is realised on relatively small lots, it is unlikely that there would be sufficient room to establish large trees without causing adverse shading effects.

- Overall findings and recommendations (paragraphs 104 to 115):

Mr Mansergh makes recommendations to manage and/or mitigate the transition from urban to rural in order to “help maintain the amenity of the neighbouring Country

Living Zone and create a legible transect from urban to rural” and to ensure the provisions of the District Plan do not create a monoculture of residential development including a distribution of lot sizes per neighbourhood block which overall “will adequately mitigate the effects of rezoning on landscape and amenity to acceptable levels” [paragraph 115].

As stated above, within the original MG report provided with the application, Mr Graham himself states that “the subdivision represents land within a transition zone between rural and urban land uses”.

Having regard to Mr Manserghs comments above, I consider that the comments by HG that land within the TK West Living Zone is to provide a transitional zone between the rural and urban environments are not inaccurate.

Additionally, the Te Kauwhata Village, at the time of the Plan Change featured, and to a large extent still features, large residential lots throughout the township.

Notwithstanding the comments above, the District Plan provisions relating to TK West Living Zone were imposed to enhance the village by ensuring further development was at least consistent with existing density levels, and that standards of construction, footpaths and lighting were of a higher or similar standard. The rules require a minimum and overall average lot size but also a variation of sizes per neighbourhood block. This was to achieve consistency in terms of density but also to enable a spread of section sizes and styles of housing for people who wish to live in the area and allow for owners to establish large trees without shadowing effects.

The visual perception of restricting the overall building coverage under the Application is different to the visual perception of the SS development as the Application will allow for an increased number of smaller dwellings on smaller lots with smaller gaps between versus the view of fewer larger houses with larger gaps between. The visual impact of fewer houses with a larger footprint is more consistent with the character of an environment transitioning between rural and urban. This is evident in the size of 'Countryside Living' zone dwellings compared with 'Living' zone dwellings in the Te Kauwhata township, and it is assumed that the 'Living Zone Te Kauwhata West' is intended to be a step between these two typologies.

Hilltop Reserve

As stated above the Applicant has now decided on one option for the Hilltop Reserve where previously there were two options as follows:

- 1) Reduce overall contours and create a flatter reserve area for recreation (playground) and construct a manmade mound creating a high point in a slightly different location whilst retaining views out to the landscape. This involves approximately 18594m³ of cut and 589m² of fill; or
- 2) Retain the hilltop and battering cut surfaces. This involves approximately 6261 m³ of cut.

The second option has been chosen by the Applicant, however as detailed above, comments regarding both options have been included in this report.

The s92 response from the Applicant points out that the knoll is not identified as either a Ridgeline Policy Area or a Landscape Policy Area in the District Plan “*but is a local highpoint noted on the District Planning Maps only as a recreation reserve*”. Regardless, the provisions throughout the District Plan, in my opinion, make it clear that preserving natural features, landforms and landscapes and retaining natural land contours is important especially in regard to activities within Te Kauwhata. The District Plan identifies the Hilltop Reserve as a prominent existing landscape feature to be preserved and retained for views out to the landscape but also for nearby and adjacent viewpoints looking into/at the development (see Natural Character Plan in

Appendix Og of the District Plan). In my opinion, the application fails to understand the significance of the knoll being zoned for a reserve in the District Plan in relation to the surrounding landscape nearby and does not address the adverse effects associated with diminishing or removing this feature.

In regard to option 1; whilst a manmade mound may enable views to landmarks from within the site, its prominence is diminished and thereby reduces views of an elevated open space from outside of the subdivision which creates a vegetated break in the rooftops of the new subdivision, providing further transition between zones.

In regard to option 2; whilst the proposal retains the original height and location of the knoll, the steepness of the reserve poses other problems in terms of accessibility and maintenance in its proposed shape and size, not to mention the size of the reserve means the landform will look engineered with its steep contoured sides.

The application seems to weigh one against the other (i.e. access vs retaining natural contours). The District Plan doesn't identify one being more important than the other. An application should consider these matters alongside each other and I think this proposal fails to do this.

Earthworks

The overall increase in earthworks across the site has a greater landscape and visual effect than the SS subdivision both during earthworks and in the resulting landform character. Natural topography of a site should be retained to maintain landform character where possible, and it is considered that a changeable topographical character to roads and lots gives more of a rural feel as opposed to straight, flat or gently sloping land. In fact, flattening out the sections, whilst possibly reducing the need for secondary earthworks (dependant on the type of house the landowner wishes to construct), may also reduce the style of house a person might choose to construct (i.e. a spilt level house which would require less earthworks whilst retaining a more natural land contour), compromising exactly what the District Plan hopes to achieve at this site. Given the variable topography of the site, it is reasonable to assume that it will not always be possible to retain the natural landform, however in reliance on expert advice from HG, in my opinion the extent of the earthworks will result in adverse landscape and visual effects that are more than minor.

Conclusion

The provisions of the District Plan provide the context for the assessment of effects and on this basis I concur with the assessment and conclusions provided by HG. The TKL proposal will not create appropriate lot sizes in relation to a continuum from urban (smaller) and rural (larger) lots through transect planning, **or** achieve general consistency in lot size and shape currently found within the existing environment (identified as a key urban design factor by Mr Mansergh in relation to the successful integration between the existing township and the proposed Te Kauwhata West Living Zone).

The proposed increased density of the TKL proposal will cause nearby views of rooftops to merge together altering the perception of the subdivision's density compared with the surrounding environment (which includes the neighbouring consented development (Jetco) which features larger lots and minimal rear lots). The application advises that it would be difficult to perceive views of the increased density inside the lots due to topography and mitigation efforts along the boundary of the Country Living Zone. However, illustrations of zones of theoretical visibility from both the MG and HG reports show that in some areas beyond the site, the development will be visible. While particular attention to lots abutting the Country Living Zone has been provided for made to mitigate this effect, it does not counter the distant views of rooftops that will be apparent from outside the subdivision.

Whilst the scale and form of development within the proposed subdivision may be considered to be consistent with some development within adjoining residential areas (Eccles Avenue and Totara Roads), the majority of existing residential development in Te Kauwhata features larger lots. Even those properties that are within the Living Zone, where District Plan provisions allow for a minimum lot size of 450m², contain existing development which would need to be relocated/ demolished to achieve compliant lot sizes and building platforms which means this is unlikely to happen on a large scale. Regardless, those developments along Eccles Road and Totara Place (with the exception of the western end of Totara Place) are subject to different District Plan rules which allow for higher density development ('New Residential' and 'Living') as development moves towards town. This proposal creates a density that is not in line with the relevant zoning. As a result the subdivision does not follow the intention of zoning by creating a subdivision which acts as a buffer as viewers move closer to the township (i.e. via transect planning).

By reducing the size of the lots within the Te Kauwhata West Living Zone, the proposal also reduces the overall availability of larger sections for people who wish to live in Te Kauwhata.

The rules seek to achieve lower density and greater variation in allotment sizes to increase amenity in a greenfield area where the opportunity to do so is possible. This is not always practicable for infill subdivisions. The proposal reduces the overall potential for lower density and variation in allotment size within the township.

The amount of earthworks will significantly alter the natural topography of the site, especially in relation to the Hilltop Reserve, where the District Plan provisions seek to retain the landform character.

In reliance on the assessment by HG, and in consideration of the provisions of the District Plan which provide context about the type of development that is expected within the Te Kauwhata West Living Zone, I consider the landscape and visual effects on the environment will be **more than minor** even with the conditions proposed by the Applicant.

8.3 Amenity & Urban Design

Amenity is defined in the RMA to mean those natural or physical qualities and characteristics of an area that contribute to peoples appreciation of its pleasantness, aesthetic coherence and cultural and recreational attributes. Therefore my assessment of amenity values must consider the submitters views about the amenity they enjoy. While amenity values are subjective, depending on the individual person's perception, they must be tested objectively.

The proposal involves a number of significant non-compliances in relation to the rules of the District Plan:

- 67 of the 163 proposed residential lots (41%) fail the minimum lot size rule of the District Plan;
- The average lot size of all allotments will be 701m², significantly below the District Plan rule of 875m²;
- Nine of the 11 blocks created as part of the subdivision will have less than the required 50% of allotments greater than 800m²;
- Nine of the 11 blocks created as part of the subdivision will have less than the required 25% of allotments greater than 900m²;
- Seven of the 11 blocks will contain more than 10% rear allotments;
- 31 of the proposed lots cannot achieve a compliant building platform; 27 of which also cannot demonstrate a dwelling design of at least 200m² which could be constructed as a permitted activity. (I note that the design plans have not demonstrated compliant onsite

parking or manoeuvring or earthworks and as such, I am unable to determine compliance in relation to these rules).

All of the above non-compliances have the ability to adversely affect amenity and urban design on the wider Te Kauwhata environment.

Schedule O of the Waikato District Plan sets out the Urban Design Guidelines for land within the Te Kauwhata West Living Zone. The guidelines detail urban design concepts to be considered during the resource consent process and seek to provide high quality amenity outcomes to maximise benefits to developers, residents and communities. The District Plan states:

The future character of neighbourhoods is largely determined by the street pattern, section sizes and shapes and relationship to open spaces/community facilities.

The desired urban design outcomes are

- *Subdivisions that integrate with the natural environment, and cultural and heritage features*
- *A connected street pattern*
- *Attractive streetscapes*
- *Section shapes that create private outdoor living courts on the sunny side of a house*
- *Open spaces and community facilities that have street frontage for surveillance and amenity reasons*
- *Low impact stormwater management integrated with streetscapes and open space.*

HG Report

Lauren White of HG was engaged by Council to assess whether the proposal was in general accordance with the urban design guide and to compare the urban design effects associated with the SS development vs the urban design effects associated with the TKL proposal. This was to enable the effects of the proposal to be measured against the consented effects (if it was accepted that the SS consent was likely to be implemented and therefore forms part of the existing environment). The HG report makes reference to the urban design comments provided to Council as part of the SS application (also provided by HG but undertaken by a different expert who has now left the company). I note that after HG prepared the report for the original proposal the application was then amended to:

- remove two residential lots (165 to 163 lots) to allow for a larger drainage reserve;
- to provide an alternative option for the Hilltop Reserve and then amended again to confirm one option only for the Hilltop Reserve; and,
- to include a reduced width public road connection through to Lot 1 DP 385781 (previously a private road).

These aspects were therefore not considered as part of the initial HG report but covered off in the s92 response and finalised report.

The HG report identified the following differences between the SS and TKL proposals:

- A realignment of Bragato Way and relocation and enlargement of the drainage reserve (Lot 202 on TKL plan) north of Bragato Way;
- An increase in cut across the "Hilltop Reserve" and subsequent lowering in elevation – then amended to retain the height and location of the high point and cut the sides off the Hilltop Reserve;
- A realignment of Road D, and the resultant reduction in size of "Hilltop Reserve" (Lot 135 on TKL plan) from 7689m² to 2517m²;
- A realignment of the drainage reserve in the eastern part of the site (Lot 220 on TKL plan);
- A change in location of connecting roads to Lot 1 DP306539;

- An increase in block depth and resulting increase in the number of rear lots;
- An overall increase in yield (130 to 165 lots).

HG addressed the effects of each difference which are detailed in sections 4.5.1 – 4.5.7 as copied below:

4.5.1 REALIGNMENT OF BRAGATO WAY AND ENLARGEMENT OF STORMWATER RESERVE (LOT 202 ON TKL PLAN).

The TKL plan proposes to realign this entry road such that it "meanders" rather than progresses along a straight line as per the Silverspur plan. Whilst it appears the proposed earthworks in this area of the site are slightly more than that of the Silverspur proposal, the road echoes more closely the natural topography. From an urban design perspective, this is a favourable amendment; it recognises natural land form and thereby integrates more closely, while creating a more interesting user experience. It also provides a greater variation of lot depths (and therefore sizes) along the north side of Bragato Way, potentially assisting with the interface to the Countryside Living Zone through additional variety and opportunity for on-lot vegetation.

The slight relocation and enlargement of the drainage reserve (presumably to accommodate greater anticipated stormwater volumes) has no real urban design implication. In the approved plan, the average width of lots adjoining the Countryside Living zone was 25m (5m less than required by the District Plan). The width of the drainage reserve has however increased from 34.5m to 50m, reducing the remaining width to be shared across the lots. However, since there is now one less lot, it can be assumed that the potential effects of this infringement are also negligible. In addition, the average size of lots adjoining the CLZ has increased in the TKL plan (now over 900m²) and although it is the lot width that has the greater impact on the perception of density, this can assist through providing greater area for garden planting etc. which helps to mitigate the visual impact of development on the CLZ.

In conclusion, from an urban design perspective, these amendments are supported.

Comment:

I agree that the realignment of Bragato Way better recognises the natural land form and thereby integrates more closely with the land. It will also provide a greater variation of lot depths (and therefore sizes) along the north side of Bragato Way, potentially assisting with the interface to the Countryside Living Zone. I also agree that the increase in size of the drainage reserve, which results in the reduction of two lots along the boundary of the Country Living Zone will improve the interface with the Country Living Zone in comparison with the SS consent. I conclude the effects associated with the realignment of Bragato Way and the enlargement of the drainage reserve will be no more than minor.

I note the earthworks in this area increase as a result of these changes. I haven't specifically looked at the effects associated with earthworks as a result of each change between the SS and TKL proposal, but rather the amount of earthworks proposed across the whole site. I draw conclusions about earthworks further in my report.

4.5.2 INCREASE IN CUT ACROSS "HILLTOP" RESERVE

The Te Kauwhata Structure Plan (15A.3.3 Landscape, open space and amenity values) includes the following intention:

"Open space can be achieved where areas are visually prominent, in areas where established amenity trees already contribute to the local environment and around the lake and wetland edges and their tributaries."

The structure plan identifies the hill top as one such open space.

In his urban design assessment on behalf of Council, Mr Butler provided support for the size and shape of the Silverspur recreation reserve. However, he indicated his concern with the extent of earthworks around the "hill top" reserve and recommended a more gentle land modification be pursued:

"It is important from an urban design perspective that the topography and landscape qualities that make this space unique, should be preserved as far as practicable."

I support this view and acknowledge his recommendation for the applicant to further consider maintaining more natural landform in this area.

The TKL plan now proposes an additional volume of earthworks compared to the Silverspur subdivision (362,043m² over 220,871m²) and lowers the level of the reserve by up to 6m. This is on the basis that it provides more gentle road gradients (better for walking and cycling) and less retaining structures for dwellings.

From an urban design perspective this change is also inconsistent with the intentions of Criterion Oga2.1 "Integrating towns into the natural environment", which aims to ensure strategic natural assets, (i.e: lakes, rivers, hill tops, significant stands of vegetation), are recognised and integrated into the design and layout of urban areas. Retaining distinctive land forms contributes to character, provides views and increases opportunities for solar gain. This reduction in elevation (together with a reduction in size - see next point) reduces the potential prominence of the park, its aspect and views and potential to add value to the neighbourhood.

With respect to road gradients, I concur that more gentle gradients better facilitate walking and cycling but this needs to be balanced with the intention to retain unique natural land forms and capture the resultant landscape and amenity benefits. Lowering the hilltop by 6m would mean that it is no longer as noticeable as a site feature, relative to other slopes. Road gradients on the Silverspur plan were acceptable/compliant and therefore presumably adequate for all modes of movement, including walking and cycling.

It is understood from the TKL AEE that further detail design of the Silverspur proposal indicated that significant retaining walls adjacent to the park are required for implementation (no such retaining walls are illustrated on the consented Silverspur plans). Should this be the case, and no practical engineering solution exists, this would have an undesirable urban design outcome, with the park separated from the public street environment and difficult to access.

Lowering the hill top on the basis that it makes walking and cycling to it easier prioritises convenient accessibility over landscape character, which is not reflected in the urban design guidelines identified earlier. Council's intended function of the reserve will also inform this issue, namely, if the reserve is intended to meet the active recreation needs of the community, the ability to enjoy more elevated views may be a secondary benefit to ease of access. Should it be envisaged also as a place where people can enjoy views out to surrounding countryside, then additional effort to access it could be warranted.

I note that earthworks have been/are being undertaken on the adjacent property to the north east which shares the hill top reserve so the opportunity to retain this elevation may already be lost. Similarly, I note from the AEE (December 2016) that Council Staff (Reserves) have already agreed to the proposed reduction in elevation.

In summary, from an urban design perspective, the modification and lowering of the land form reduces its ability to add identity and focus to the subdivision, as well as the ability for visual connection out to the rural area. Assuming "integration with the natural environment" (as per Appendix OG and Appendix OGA) means respecting the natural character and landform, this should be deemed inconsistent.

Comment:

As mentioned above, these comments were provided before the alternative option to retain the natural high point of the Hilltop Reserve was presented to Council. In regard to the option relating to a manmade mound; I concur with the HG comments above. In relation to retaining the natural contours of the reserve; the proposal is more closely aligned with the District Plan provisions in regard to retaining natural landforms and contours and reducing the need for earthworks. However, I acknowledge that the steepness of the reserve poses other problems in terms of accessibility and maintenance in its proposed shape and size.

I note, no earthworks (other than remediation earthworks) were consented to within the portion of the reserve within the Jetco site and the natural contours were to be retained.

4.5.3 REALIGNMENT OF ROAD D, AND THE RESULTANT REDUCTION IN SIZE AND CHANGE IN SHAPE OF "HILLTOP" RECREATION RESERVE (LOT 135 ON TKL PLAN) FROM 7689M² TO 2517M²

The TKL plan now proposes a significantly smaller reserve (a reduction by over 5000m²) and the realignment of Road D. Notwithstanding Council's potential intentions for the preferred size and function of this reserve, it is noted that it is now significantly smaller than that illustrated on the District Plan. Along with the reserve area provided by the adjacent development, the size of this recreation reserve would be 7540m². By way of comparison, Auckland Council generally seeks around 4000m² for a neighbourhood level recreation reserve, with a flat area of approximately 30m by 30m.

It should also be noted that although the reserve is smaller, the flatter (more useable) land has been retained by the TKL subdivision and the steeper slopes contained within residential sections.

The shape of the reserve proposed by TKL is more regular in shape and it enjoys a comparable level of road frontage. However, the Silverspur plan provided an additional point of entry to the reserve (from Road E) which made it more accessible to the wider neighbourhood. It also provided a link to the drainage reserve in the eastern area of the site (Lot 139 on the Silverspur plan) and thereby allowed for the integration of reserves and potentially economy of maintenance. However, that reserve required a retaining wall of up to 2.0m to be feasible, thereby reducing accessibility and creating safety and surveillance issues.

The recreation reserve is still bordered by private lot boundaries, on its east and southern boundaries but this distance has been reduced through the reduction in size and change in shape. Recommendations to control the nature of fencing in order to promote surveillance of the reserve are still supported.

In summary, while noting a reduction in size reduces the prominence of this park, the proposed reduction in size of the hill top reserve is acceptable from an urban design perspective; it excludes areas which would have been difficult to access, maintain and keep safe and still offers usable size and function.

Comment

I agree that retaining the natural contours of the reserve was always going to present problems in terms of maintenance. Possibly access may not have been so problematic if alternative options were investigated (e.g. cutting out areas specifically for parking and/or cutting out specific areas for stepped or ramped walking trails to the highpoint).

There is also the tension between providing usable space for recreation (i.e. flatter land) which is also an urban design consideration vs retaining natural contours and providing a passive reserve (which was the intent of the District Plan provisions).

The TKL proposal features lots to the south of the reserve that were previously located on lower elevations (as consented within the SS proposal). It is unclear whether or not these lots would now require building height restriction covenants to preserve the views from the top of the reserve. If this were the case, this would defeat the purpose in retaining the high point in the first place which is to enable views out of the development.

4.5.4 REALIGNMENT OF DRAINAGE RESERVE IN EASTERN PART OF THE SITE (LOT 220 ON TKL PLAN)

The drainage reserve is now aligned more closely with the natural topography and provides views into the site on approach from the south. It also aligns more closely with reserve space to the north. This is a beneficial amendment from an urban design perspective.

Comment

I agree with the comments above. The proposal removes the link between the recreation reserve and the drainage reserve provided under the SS consent thereby reducing the integration of reserves and potentially the economy of maintenance. The inclusion of a walkway along the drainage reserve will add to the amenity of the area by increasing connectivity. However, as far as I am aware there is no proposal to form a walkway within the drainage reserve to the north, meaning that this connection may never be constructed.

4.5.5 CHANGE IN LOCATION OF CONNECTING ROADS TO LOT 1 DP 306539

Both plans provide three local road connections between the development site and the site to the south so the level of connectivity between the approved Silverspur and the proposed TKL subdivision is comparable.

In line with the point above, Road G provides good access into the development and views through the site.

In the Silverspur proposal, Road C was aligned such that it provided long distance views from within the development, across the drainage reserve and into the countryside. This would provide residents with a visual connection to the surrounding natural environment and contribute to sense of place.

The revised TKL plan no longer has this benefit, as Road C no longer provides this visual connection.

Comment

I agree with the comments above. The roading network is an integral aspect that impacts on the urban design of a development. A significant aspect of the structure plan and the urban design guide is the requirement for a connected street network. This is outlined under Oga3.2. The revised subdivision scheme impacts connectivity at both a block level and neighbourhood level. At a block level cycling and walking will be more challenging (particularly to the recreation reserve) due to a loss of a connection and increased size of the block resulting in longer travel distances. At a neighbourhood level, clear and legible access from the southern portion of the Silverspur subdivision to the northern portion of the Jetco subdivision will be affected by the loss of Road C. Road C is an important 'connecting' element of the structure plan linking residential land use with recreation and stormwater amenity, as well as servicing blocks at a neighbourhood level. Whilst the removal of this road results in adverse amenity effects, I acknowledge that the topography of the site within this road corridor is steep and this must be weighed up when considering whether it is appropriate to remove this connection. Of importance is the fact that the neighbour to the north, has just received consent from Council to remove this link.

4.5.6 INCREASE IN BLOCK DEPTH AND RESULTING INCREASE IN THE NUMBER OF REAR LOTS

The Silverspur proposal has conventional blocks, with a low number of rear lots, well within the maximum prescribed by the District Plan. These rear lots were considered acceptable in response to the irregular block depth and geometry and were not anticipated to reduce the overall amenity of the subdivision.

The TKL plan represents a fundamental shift and has increased the block widths and resultant rear lots such that they now comprise a significant proportion (nearly 30%) of the overall yield. Most plans and design guides limit the permitted percentage of rear lots (around 5 to 10%) as they:

- *generate public/private conflict along the sides of front and adjacent lots and a tendency for high fencing*
- *generate potential loss of privacy and conflict across boundaries at the rear through creation of "front to back" situations and limitations on privacy if fence height is restricted*
- *do not provide clear connection to the road, community, or amenities*
- *utilise additional land for the purpose of on-site vehicle manoeuvring, thereby increasing impervious surface area and reducing opportunities for landscaping and recreation*
- *reduce the amenity (street trees, landscaping and pedestrian comfort) of the streetscape by resulting in additional driveway crossings, relative to blocks with only front lots*
- *reduce the number of "eyes of the street" or surveillance by increasing the distance between houses and the number of dwelling units per length of road.*

The AEE justifies the proportion of rear lots on the basis that they avoid the construction of an additional road, which would increase lot sizes and require secondary earthworks at the time of dwelling construction. Roading, particularly with street trees, serves to spatially fragment residential environments and thereby reduce their overall perceived density.

Again, balancing the benefits of increased density (higher than that anticipated by the DP) and reduced earthworks/retaining through the use of rear lots is difficult to support. Larger lots on steeper slopes generally allow more room for battering and vegetation/landscaping, both of which help to "nestle" dwellings into the topography. There is also the ability to step dwellings with the topography, thereby integrating retaining structures into the buildings.

If rear lots are to be allowed, then the use of proposed 'laneways' which are longer and more connective and essentially function as minor public roads with respect to fronts and backs etc. can also be employed to reduce the cost and impact of full width public roads.

It is noted that the TKL application includes specific proposals for JOAL's/ Access Lots to ensure they are open in nature and consent notices on the relevant lots to ensure yard space, appropriate fencing etc. which go some way to mitigating adverse effects.

Comment

The District Plan states that 'Rear lots should only be provided where the original allotment shape makes it impractical for all new lots to have standard road frontage. Minimising the amount of land required for roads, and hence maximising the number of new lots that can be created, and minimising road construction costs are not adequate reasons for creating rear lots'.

I agree with HG that generally larger lots allow more room for battering and vegetation/landscaping, both of which help to "nestle" dwellings into the topography and that there is also the ability to step dwellings with the topography, thereby integrating retaining structures into the buildings. The proposal essentially removes these options for landowners and by doing so moves further away from what the District Plan is trying to achieve.

4.5.7 OVERALL INCREASE IN YIELD (130 TO 165 LOTS)

Unlike the Silverspur proposal, the average lot size, and therefore resultant density, is higher than that anticipated by the District Plan. The applicant argues that smaller lot sizes makes more use of the land resource and requires less earthworks, (as the change in elevation is less across a shorter distance.) Assuming the building platform/benched area would stay the same, a larger lot provides greater opportunity for a more gradual battering as an alternative to retaining walls, larger yards/outdoor areas and additional vegetation which aids visual integration and on-lot amenity. Again, the desire to achieve minimum densities/responsible use of the land resource needs to be balanced against the perception of increased density and potential reduced on-lot amenity.

Non-compliance with respect to site coverage, shape factor and yards is a further outcome associated with lots which do not meet the minimum size. Consistent and significant non-compliance with these development controls (nearly 20% of total lots) will contribute to the perception of increased density and these perceptions need to be considered both at an internal and external level. From an internal neighbourhood/street perspective, infringements of these controls are unlikely to be perceptible, as lot frontage widths and front yard setbacks (along with building mass and setback) may be comparable with the Silverspur proposal. In some ways, from a streetscape perspective, the increased density is "hidden" through the use of the rear lots while residential development on front lots exhibit the kind of outcome proposed by the Silverspur plan.

It is noted that the topography of the site appears to be generally higher than surrounding land and may be visible from the main approach to Te Kauwhata from SH1 and other main roads. Any perception of increased density from outside the development, and the resultant progression and interface from rural to urban use has been considered by a Landscape and Visual Assessment Overview in section 2 of this report.

Comment

I agree that smaller lots will make more use of the land resource however creating higher density developments in this location was never the driver for the District Plan provisions. Other areas have been identified for higher density residential developments within Te Kauwhata.

The Te Kauwhata Structure Plan area comprises of a number of discrete Living Zone areas that allows each to have standards specific to its topography and setting. The existing district-wide standards are not considered appropriate for the newly zoned areas as they would not achieve the objectives of the Te Kauwhata Structure Plan. The new Living Zones are: Te Kauwhata Living, Te Kauwhata Living (New Residential), Te Kauwhata West and Te Kauwhata Ecological.

Te Kauwhata Living and Te Kauwhata Living (New Residential) are the same as those currently zoned in the District Plan with minor changes to the rules. The proximity to the town centre to these areas reflects the standards already in place.

New standards apply to the Te Kauwhata West area of larger lot sizes that reflect the topography and land stability, the need to incorporate low impact features on site, the village character and the open space amenity look and feel.

The Te Kauwhata Ecological lot size standards are designed so that the density of development within the Whangamarino Wetland catchment reflects the sensitivity of the environment.

The rules require developers to ensure variation in lot sizes to provide choice for prospective purchasers, and to minimise the number of rear lots to maintain neighbourhood amenity.

HG consider that at a streetscape level the lot frontage widths and front yard setbacks (along with building mass and setback) may be comparable with the SS proposal as development is essentially hidden through the use of rear lots. However, from high points within the site, the

density of buildings will be evident and along a portion of Bragato Way (main collector road) the higher density will be perceived due to the frontage width of the lots on the Southern side of the road. I also think that the higher impervious surfaces (within the lots and from the 'laneways') and a higher number of rooftops will also lead to a perception of higher density.

In addition to the assessment by HG, I provide further comments below in relation to aspects of the proposal that may impact on amenity and urban design:

Alternative Option for Hilltop Reserve

This option involves retaining the natural contours and creates a more gentle land modification than flattening out the hill and creating a new smaller highpoint. In this case, the topography and landscape qualities of the site make this space unique and by preserving these features the proposal is more closely aligned to the rules and the urban design guidelines (especially those within Og8) set out in the District Plan. I acknowledge that this option, at the proposed size and shape of the reserve, which is significantly reduced from the consented SS reserve, may lead to undesirable urban design outcomes in terms of separating the park from the public street environment, difficult access and high retaining walls. I am not convinced however that alternative options such as creating a larger reserve, battering slopes and or vegetation in front of retaining walls for softening or specific dug out areas for car parking and access may have achieved better outcomes. I don't know this to be the case however as this information has not been provided to me.

Building Platforms

28 of the proposed residential lots cannot achieve a compliant shape factor or demonstrate a permitted single level dwelling of at least 200m². This is a direct result of the increase in yield. The building platform rules had public input with the intention to create high amenity developments within the Te Kauwhata West Living Zone through larger lots and larger houses. Whilst it could be argued that smaller lots and smaller houses would make more use of the land resource, the provisions of the District Plan, in my opinion, are clear that this is not the appropriate place such developments and that the effects associated with this proposal will compromise amenity.

Reduced width public road connecting into Lot 1 DP 385781

Under the SS consent this road connection was provided as a ROW. No access was provided through to the neighbouring site for various reasons:

- Only two additional users would be able to connect into the ROW before triggering a prohibited activity status (i.e. under the District Plan a shared private vehicle access that services nine or more allotments is a prohibited activity);
- If the neighbour never subdivided or decided to gain access directly off Wayside Road, the connection would never be utilised and the road would only serve 6-8 lots;
- The neighbouring property has approximately 115m of frontage to Wayside Road; Creating a 20m wide public road would possibly compromise the lot orientation of any subdivision in the neighbouring property given the small and narrow shape of the lot;
- The neighbour provided written approval for the connection to be removed;
- Council did not consider this would compromise connectivity in and around the site.

This proposal seeks to create a reduced width public road (14m legal width) which connects through to Lot 1 DP 385781. The reasons for its reduced width are not provided nor are the effects associated with the non-compliance. The road cross-section plan shows that footpaths, street trees and lighting are only provided on one side of the road. This reduces the overall open space which has the potential to reduce amenity and urban design.

Pedestrian access to create connections between reserves

The proposal advises that there will be a walking connection through to the Jetco development.

Whilst creating connections between reserves is encouraged, in this case, the Applicant has not demonstrated that a walkway could be constructed through the steep and, in some areas, boggy reserve, or discussed the ongoing maintenance requirements with Council who I assume would be responsible for maintaining the walkway following vesting of the land. Without further information, Council cannot determine whether the proposed walkway can be constructed. If so, I agree that this connection will be positive in terms of pedestrian access. I understand however, that the neighbour to the north is not proposing to construct a walkway within the portion of the drainage reserve within their property (and this was not a requirement of their consent). As such, this connection may never be realised.

Integration with Surrounding Development

The Application does not consider how this proposal will integrate with surrounding properties which are subject to the same rules. The neighbouring property to the north has obtained subdivision consent and is generally consistent with District Plan provisions in terms of lot size, and retaining the Hilltop Reserve. To those who will pass through these developments once road and pedestrian connections are formed, I consider that the change in density will be perceivable via shorter lot frontage widths, the increase in rights-of-ways, and from some viewpoints an increase in the number of rooftops.

Building Height Restrictions to Maintain Views from the Hilltop Reserve

The application does not identify whether development on lots around the reserve (on both the subject site or the Jetco site) will need to be restricted to a certain level to ensure views from the hilltop reserve are preserved. If building height restrictions are required, the applicant has not advised the mechanism to restrict building/vegetation heights within these properties. This could be especially problematic on the Jetco lots which are already consented.

Retaining Walls

The construction of retaining walls can impact on visual amenity and urban design. In this case, retaining walls are proposed in various locations within the development (refer Figure 9 above). The plan gives a clear indication of the location and height of the proposed retaining walls required as part of the subdivision works. HG advise that retaining walls will be visible on the Northern edge of the site facing the 'Countryside Living' zone at heights up to 3m. As with the SS development (following detailed design), these will have a negative visual effect on the surrounding environment. The applicant has not commented on the impact of viewing the walls or offered any mitigation. It is standard practice that any retaining walls exceeding 1.5m in height require a barrier fence on top for safety purposes (i.e. to reduce the risk of falling). The application has not commented about the effects associated with the additional heights as a result of the barrier fences or mitigation around this. I acknowledge that in comparison to the SS retaining wall heights determined via detailed design, the reduced heights of the retaining walls is positive.

Lots backing onto land within the Country Living Zone (CLZ)

13 of the 17 lots backing onto the CLZ will not comply with the required 30m boundary width rule of the DP. I consider the effects of this non-compliance are localised and have not been discussed here.

Open Space for Landscaping/Street Trees

The landscaping proposed as part of this application is required as a minimum and doesn't necessarily offset the effects of reducing the overall open green space from the development. When compared to the SS proposal, this proposal seeks to reduce the size of the reserve by approximately 5000m², reduce road widths and remove swales from within all minor roads, create smaller lots which may not be able to contain mature trees without shading neighbours and increase overall impervious surfaces via 17 'laneways' and also within each lot (allowing for up to 50% impervious surfaces within lots). All of these factors influence streetscape character.

The TKL proposal does however increase the area within the drainage reserves quite significantly (by approximately 2775m²), which does help to reduce the adverse effects of the overall reduction in space for landscaping. Regardless, planting within the drainage reserve, in my opinion, because the planting is restricted to the reserve locations, does not counteract the adverse effects of reduced private space for planting or removal of swale drains which are provided for across the whole of the site as part of the SS proposal. Trees are often the most important element in improving streetscape character and where opportunities to plant trees have been reduced this reduces the overall amenity of the streets.

Laneways

The 'laneways' are wider than typical driveways and will split the line of houses along the street. This detracts from the streetscape character. It is unclear whether the laneways will provide adequate access for emergency vehicles. Typically there is ongoing maintenance issues long term between owners who share private ways. If landscaping along the laneways is not maintained this can also detract from streetscape character.

Impervious Surfaces & Building Coverage

The proposal seeks to allow for up to 50% impervious surfaces regardless of lot size; where the rule requires the following:

- on lots with a net site area of 650m² and less than 700m² no more than 35% of the site being an impervious surface
- on lots with a net site area of 700m² and greater no more than 40% of the site being an impervious surface.

The proposal also seeks blanket consent to allow for a maximum 30% site coverage (measured against the net site area of each allotment) with a maximum building coverage allowed (irrespective of lot size) of 280m²; where the District Plan requires the following:

- on lots with a net site area of 650m² and less than 700m² total building coverage does not exceed 25%
- on lots with a net site area of 700m² or greater total building coverage does not exceed 35%

A reduction in amount of impervious surface allowed within the Te Kauwhata structure plan area compared with elsewhere in the district reflects the importance of retaining natural hydrology and landscape values as much as possible. This rule in combination with the lot-size rules and the building coverage rule will result in more rain infiltrating the soil and more area being available for amenity planting, particularly trees. The hydrological implications of increased impervious surfaces are detailed below in another section (Stormwater Management).

In regard to available area for amenity planting, the District Plan rules link the percentage of impervious surfaces to the size of the lot to ensure the overall building coverage on smaller sized sections is reduced. This rule in combination with the other density based rules is intended to reduce the density of development across the zone and increase the relative amount of private open space available for each lot.

Whilst the proposal to change the building coverage allowance for lots may decrease the overall building coverage across the development, the increase in impervious surfaces will reduce the amount of private space available for amenity planting.

Lot Orientation

Whilst there are recommendations within the Urban Design Guidelines in Appendix Og of the District Plan in relation to lot orientation, any development within the subject site will be heavily influenced by the topography of the land.

With this in mind, I think the lot orientation does, in most cases achieve the guidelines as follows:

- Sites with north, east or west facing rear yards should be rectangular rather than square to maximise the private rear yard.
- Sites with east or west facing rear yards can be wider and shallower to allow for north sun into the house itself. Subdivision plans should minimize sites with north facing front yards as the sunny side of the house is open to the street. North/South streets are better than East/West streets as they reduce the number of houses with a north facing front yard

Stormwater Tanks

Stormwater management within the site will require each lot to attenuate rain water within the properties using water tanks. Cumulatively, such tanks have the potential to adversely affect urban amenity if not located appropriately within the site (i.e. at the rear of a dwelling), or if they are a prominent feature of a property when viewed from a public space. I am satisfied that mitigation is available to avoid any adverse visual effect (i.e. height restrictions on tanks to allow effective planting of shrubs to screen them, or screening by the dwelling).

Showhomes

The proposal seeks to construct four show homes within consented lots 1, 2, 124 and 165. As yet the Applicant does not have specific floor plans for the showhomes and instead seeks approval for the activity itself (a commercial activity by definition). Because the subdivision and land use consent is being processed concurrently and will be decided on together, Council consider the effects of establishing the show homes to be no more than minor on the environment because:

- The show homes cannot establish unless the subdivision consent is granted meaning their construction will not compromise the subdivision if the subdivision layout is amended;
- The show homes will be required to be constructed in accordance with the bulk and location rules, otherwise will require further consent;
- The show homes will look like residential dwellings which are anticipated in this area and will be characteristic of the site once developed;
- Initially the show homes may generate more traffic than a typical residential activity however; this will decrease as the site develops.

Construction Noise

Noise during the construction phase will need to comply with the standards in the District Plan and will be temporary in nature.

Conclusion

The objectives and policies of the District Plan give context to the rules of the District Plan and provide an understanding of the level of effects that are appropriate within specific areas/zones within the district. With this in mind, the scale and significance of non-compliance associated with this proposal indicates to me that the urban design and amenity effects associated with the proposal are significant and certainly more than minor.

8.4 Geotechnical Effects & Liquefaction

A Geotechnical Investigation was undertaken by OPUS who provided preliminary comments regarding geotechnical matters including liquefaction as part of the SS application. The assessment identified a number of potential constraints to the site including:

- unstable areas such as landslips, soft ground, gullies and stream channels;

- very weak soils at depths of 3 to 12m below ground level in some areas;
- approximately 4m of very soft ground straight from the ground level in the lowest lying parts of the site;
- high ground water in areas across the site;
- vast majority of soils at the site contain soft clay and silt which are likely to result in low permeabilities;
- potential for soils to liquefy and vertical liquefaction induced settlement during a significant seismic event due to site soils grain size, density, strength and the high water table;
- signs of instability included hummocky surfaces, crescent-shaped depressions, trees leaning uphill and a spring;
- soft soils in lower elevations around the site reduce bearing capacity and founding conditions.

Based on the findings the following recommendations were provided:

- minimal earthworks and excavations;
- specific engineered foundations in areas containing weaker soils;
- individual lot geotechnical investigations for lots within areas where soft soils will not achieve required bearing capacity, ground improvement or reinforcing measures to be employed (e.g. rib raft type foundations);
- avoiding construction within lowest elevations or engineered ground conditions in these areas;
- engineering the unstable slopes in the area directly east of the central ridge, possible retaining structures required;
- following the completion of an earthworks plan, further stages of ground investigation are undertaken to provide information to enable detailed design.

The OPUS report was reviewed by Coffey Geotechnics Ltd on behalf of Council. The Coffey report (reference GENZHAMI17208AA-AB, dated 5 March 2015) suggested further consideration should be given to seismic conditions for the proposed development in terms of the level of risk associated with development of the site and suggested mitigation measures to avoid, remedy or mitigate any adverse effects of the proposal. On this basis, a subsequent addendum to the original report was prepared by OPUS and provided to Council. The report provided further recommendations to be implemented at detailed design stage to ensure the geotechnical effects of the proposal will be no more than minor:

- An assessment of potential liquefaction effects with regard to the final proposed site layout and structures;
- All slopes that have the potential to impact the development must be assessed for stability in both static and seismic cases and appropriate factors of safety chosen for each case. Where structures or infrastructure may be negatively affected appropriate mitigation measures shall be implemented;
- Foundation design for each building must be made with regard to bearing capacity, settlement and the results of a liquefaction assessment OR appropriate ground improvements must be designed to provide an acceptable reduction of risk to the proposed structures;
- Services, fills, embankments and roads must be appropriately designed to reduce or mitigate negative effects from liquefaction, slope instability and groundwater. In particular (but not exclusively) potential settlement, buoyancy and lateral spreading risks.
- All geotechnical design works shall be supervised, managed and signed off by a Chartered Professional Engineer with geotechnical specialism and practice area

Coffey reviewed the addendum and concluded that the recommendations are appropriate. In

line with the SS consent, if consent is granted, conditions of consent will require the recommendations be implemented.

Conclusion on Geotechnical Effects and Liquefaction

Overall, subject to implementation of conditions of consent, the geotechnical effects of the proposal will be no more than minor.

8.5 Earthworks

Earthworks associated with re-contouring of land and construction of infrastructure and earthworks to be undertaken within the proposed lots can adversely impact on the greater environment in respect to noise, dust and odour. In this case, the volumes and areas of earthworks and depths of cut and fill are significantly greater than the permitted standards under the District Plan but also greater than the level of earthworks proposed under the SS proposal. This is partly due to the proposal to earthwork within the Hilltop Reserve, including earthworks within the portion of the reserve within the neighbouring property.

Given the size and varied topography of the land and the necessity to construct roads and footpaths and install services, it is expected that the proposal would fail the earthworks District Plan requirements.

The effects of earthworking the site on the landscape and visual amenity have been addressed above where it was concluded the effects on the landscape and visual amenity would be more than minor on the environment.

In terms of noise and dust, the effects of the proposed earthworks will be temporary in nature, and I am satisfied that should consent be granted, conditions of consent will ensure that works are undertaken in a manner which ensures no minor adverse effects result.

In this case, stormwater ultimately discharges into the Whangamarino Wetland. As such, it is important that erosion and sedimentation controls are put in place prior to commencement of earthworks to ensure the wetland and waterways are protected from sedimentation discharge.

All earthworks across the site will need to be undertaken in accordance with the recommendations of the preliminary and final geotechnical reports. If consent is granted, a condition of consent will require that a Geotechnical Assessment Report be provided detailing earthworks specifications, staging and duration of earthworks, and erosion and sediment controls. Notwithstanding this the Applicant has obtained consent from Regional Council which requires that erosion and sediment controls are to be in accordance with Waikato Regional Council's Erosion and Sediment Control-Guidelines for Soil Disturbing Activities: January 2009.

Conclusion

In regard to the landscape and visual amenity aspects of undertaking earthworks, I conclude the effects on the environment will be more than minor as detailed above.

Subject to compliance with conditions of consent, I consider the temporary effects associated with earthworks to prepare the site for development, the effects related to sedimentation and erosion, and the geotechnical effects will be no more than minor.

8.6 Land Transport & Traffic Safety

The subdivision will create 163 residential lots or approximately 1,630veh/day, using a typical trip generation of approximately 10trips/day/lot. The wider structure plan will generate additional traffic.

Roading is an integral component of urban development, as an interconnected network with good accessibility provides desirable urban transport outcomes alongside traffic safety and efficiency.

WDC RAMM records the 2013 traffic volumes of the three affected roads as:

- Te Kauwhata Road Arterial Road 2,873veh/day
- Travers Road Local Road 669veh/day
- Wayside Road Local Road 526veh/day

Depending on the progression of development, Wayside Road may be the only access to the subdivision. Once Stage 3A is completed access through the adjacent property (Jetco subdivision) to Travers Road will be possible. Subdivision of other surrounding properties will provide additional points of access to Te Kauwhata Road and Travers Road.

The Te Kauwhata Structure Plan provides guidelines of an indicative roading layout (see Image 7 below). This includes planning maps with indicative roads (i.e. location important and intention important) and connections to neighbouring lots to ensure integrated development is undertaken. As indicative roads are a guideline, alternatives are available. Any alternative should achieve the aim of the structure plan given the community expectations of transport outcomes.

Under the SS proposal the road layout deviated from the structure plan layout including:

- Removal of a 'Local A' road along the eastern boundary of the site;
- Change to hierarchy of two internal roads (i.e. one Local A road becoming a Local B Road and vice versa);
- Modified access to Te Kauwhata Road (three road intersections included however the eastern most intersection is located further east);
- Access to the south-western portion of the site (near Wayside Road) is to be via a 6m wide private right-of-way (Lot 131), rather than Local B road;
- Relocation of proposed collector road roundabout further north (NB: space left for roundabout however only required to be formed as a 'T' intersection until development occurs on neighbouring Country Living site);
- Minor relocation of intersections with Travers Road;
- Minor changes to the alignment of some roads within the site.

The TKL road layout still includes most of the SS changes but rather than creating a private road parallel to Wayside Road (as consented under SS) the proposal now seeks to create a reduced width public road which connects the subject site to the neighbouring property. The TKL proposal also seeks to further deviate from the indicative roading layout by removing a 'Local B' road which travels north-south through the Jetco and subject site. The main collector road carriageway is also slightly modified to better follow the natural contour of the land. Image 8 below shows the proposed roading layout vs the indicative roading layout as shown within the District Plan.

Under both the SS application and this application, the proposal includes upgrades to Wayside Road from a local road to a semi-urban collector road along the full length of the subject property and includes intersection widening, a services berm, kerb and channel and a footpath and on-street parking along the eastern side of Wayside Road. If consent is granted, the conditions imposed under SS for these upgrades will be imposed as part of this consent.

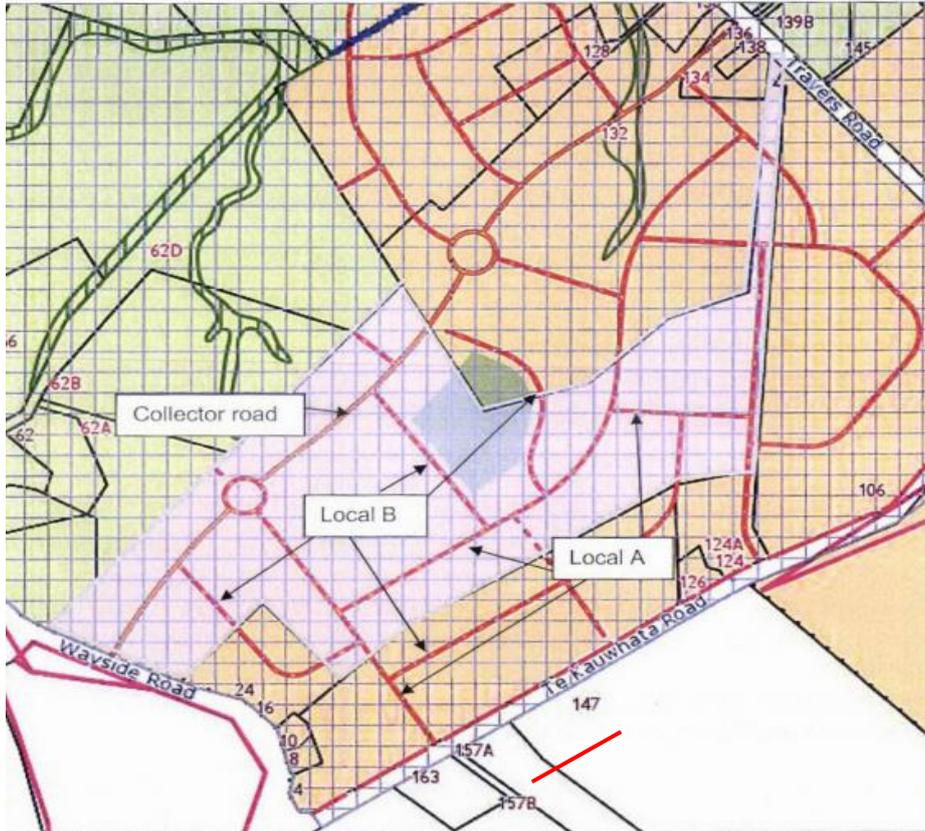


Image 7: Te Kauwhata Structure Plan showing indicative roading layout.

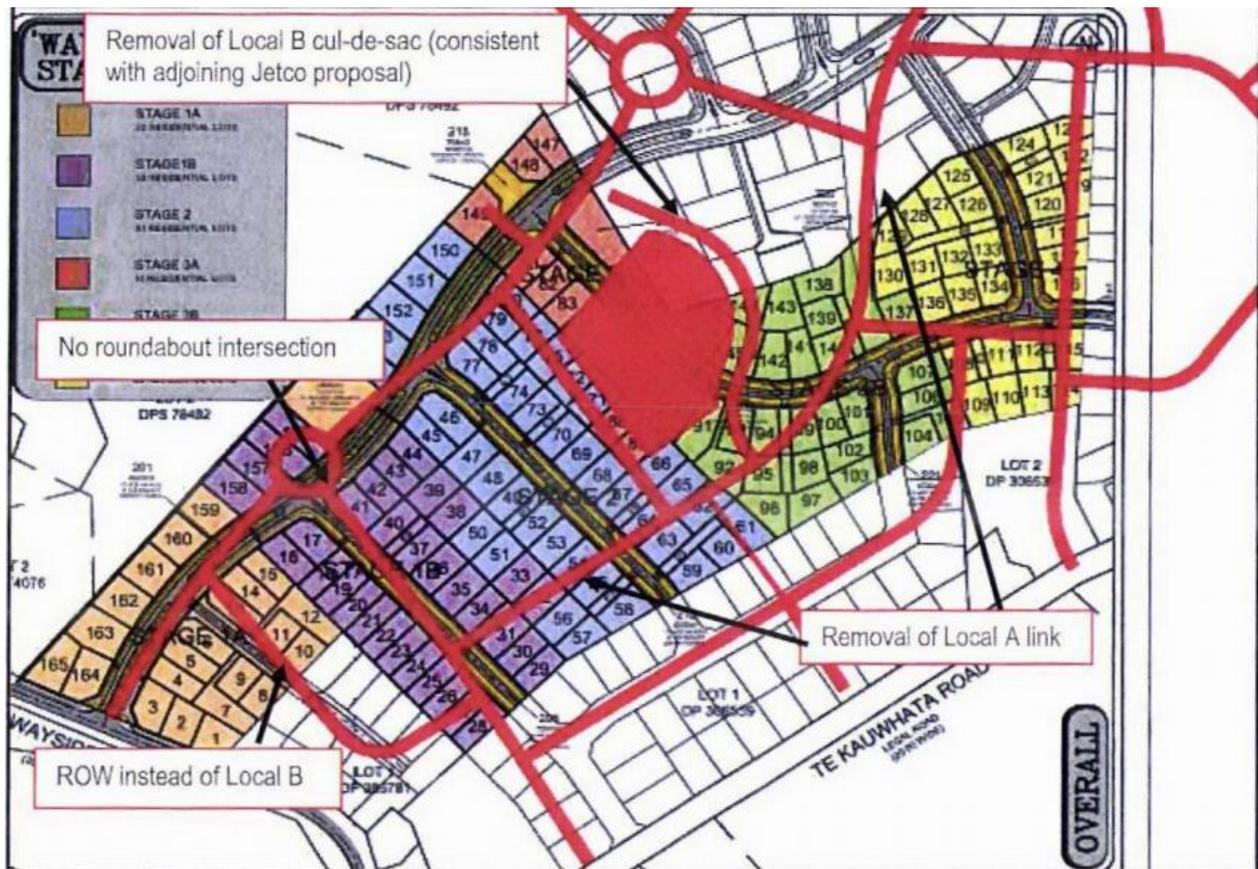


Image 8: Indicative roading layout (in red) vs proposed TKL roading layout

For the same reasons detailed within the SS consent, I consider the effects associated with creating a roading layout the same as the SS proposal are considered to be no more than minor on the environment. The SS planners report is provided for reference and details the reasons for allowing the departures from the Structure Plan roading layout.

This then only leaves the different and/or new effects associated with the TKL proposal up for assessment; these being:

- *Removal of Local Road Internal Road Layout*
- *Different Road Gradients*
- *Additional Traffic Generation*
- *Creation of a Reduced Public Road in Place of a Consented Private ROW*
- *Minor adjustment to collector road location*

The Applicant engaged Alasdair Gray of Gray Matter (Traffic Engineer) to provide technical comment relating to traffic. I note that Gray Matter also provided technical comment regarding traffic matters as part of the SS application. Reports were prepared and submitted to Council titled 'Wayside Road, Te Kauwhata Subdivision Development Traffic Impact Assessment Te Kauwhata Land Ltd' dated 3 October 2016 and addendum report 'Te Kauwhata Land Ltd Proposed Subdivision Development – Benefits of proposed Layout for Multi-Modal Accessibility and ROW A' dated 10 July 2017 (attached as Appendix E). The report details the transportation network and crash history within the area. Table 1 of this report is helpful in that it details the required and proposed road status and function of each of the roads created as part of this subdivision.

The recommended road hierarchy for this subdivision and adjacent properties as determined by Gray Matter is illustrated in Image 9 below.

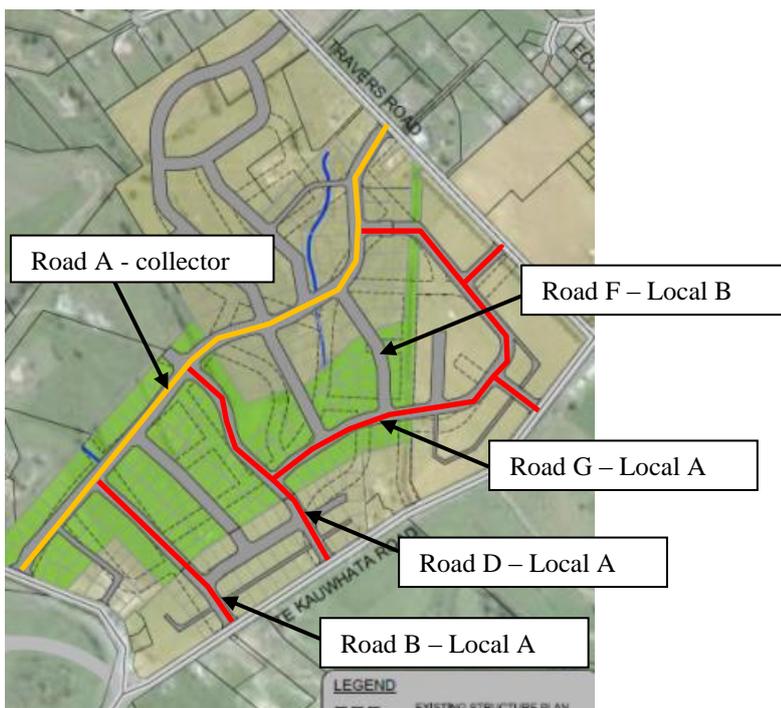


Image 9: Recommended Road Hierarchy

In reliance on the traffic engineer and review comments from the project Land Development Engineer, I conclude that the safety and efficiency effects of the proposal will be no more than minor on the environment, with the exception of the creation of the reduced width public road (shown as ROW A within the SS scheme plans). There does not appear to be any valid reasons to depart from the provisions requiring a 22m width road other than the width of the road accords with NZS 4404:2010 but the Gray Matter report does identify the reduced width of the road may limit flexibility for future road changes and may result in risks for manoeuvring given its reduced width. Council asked the Applicant to assess the effects associated with these two matters. The Applicants response was that this could be addressed at detailed design stage. As such, I cannot make a determination in relation to the traffic safety and efficiency effects of the

reduced width road.

Conclusion on Traffic Safety and Efficiency Effects

For the most part, I consider the effects on land transport and traffic safety will be no more than minor, with the exception of the effects associated with the proposed reduced width 14m public road which I cannot make a determination on. I would recommend the Applicant address this matter further at the hearing.

8.7 Servicing

Wastewater

There is public reticulation available along Wayside Road in the vicinity of the property. The subdivision is to be fully reticulated with sewer and each lot is proposed to be provided with individual connections to the wastewater supply. The proposal includes the construction of a wastewater pump station within Lot 202 which also contains a stormwater pond which is to vest in the Waikato District Council as Local Purpose Reserve Drainage. Due to the topography of the site, the property is split into two catchment areas (east and west) for wastewater design. The west internal sewer reticulation will connect to the new pump station within Lot 202 as per the Te Kauwhata structure plan. The east part of the internal reticulation is to connect to the existing, Council owned, pump station located on the adjacent property to the north (Jetco). Councils Water Services Team Leader has confirmed that this pumping station is sized appropriately to cater for the eastern catchment of the subdivision.

The construction of the pump station within Lot 202 is proposed to occur within Stage 2. However, the timing of construction will need to occur prior to occupation of any new dwelling on the property.

The rising main from the pump station is to be laid in the proposed roading corridor. As such it is not anticipated that any easements will be required for the pump station.

Councils Development Engineer has assessed the application and is satisfied with the proposal subject to conditions which require that.

Conditions of consent will require that no new dwelling is to be inhabited prior to an operating waste water scheme in the area.

Councils Development Engineer has assessed the application and is satisfied that wastewater can be appropriately disposed of subject to conditions which require that:

- the reticulated sewer system and the pump station are designed and constructed appropriately;
- each lot in the subdivision is provided with a gravity connection;
- the reticulation is required to be vested to Council prior to any discharges to the system.

Water

Each lot is to be provided with individual connections to the water supply. Te Kauwhata Town Supply extends along Wayside Road and Te Kauwhata Road. There is an existing 150mm diameter water main along Wayside Road in the vicinity of the subject property. The subdivision will connect to the public water main on Wayside Road. Council's Water Services Team Leader has confirmed that the existing capacity is sufficient for the water demand for 163 lots and I consider the proposed staging of the subdivision will not compromise the ability to provide each lot with water supply.

Councils Development Engineer has assessed the application and is satisfied with the proposal

subject to conditions requiring that the internal water supply reticulation be designed and constructed in accordance with the Hamilton City Council Infrastructure Technical Specification (ITS) and as per the recommendations given in the OPUS and Coffey's geotechnical reports to mitigate any effects from the potential liquefaction.

The infrastructure is proposed to be laid within the grass berm within the road reserve.

Telephone and Power

Telephone and power is proposed to be supplied to each lot. WEL Network and Chorus have provided confirmation that they can extend their networks to the boundary of the subject site to provide connections.

Overall, I consider that each lot can be serviced appropriately and that any adverse effect on the wider environment will be no more than minor.

Stormwater Management

There is no Council stormwater reticulation in the area that can provide for concentrated stormwater as a result of impervious surfaces across the site. The land is undulating and divided into two distinct catchment areas (west and east), both of which ultimately discharge into the upper reaches of the Whangamarino Wetland.

The western catchment naturally discharges into a tributary which is located in land directly to the north of proposed Stages 1 and 2 and into adjoining Lot 3 DPS 78492. The eastern catchment discharges into a drain which runs through the adjoining Jetco subdivision and into an existing stormwater pond that has been partially constructed, and is to be upgraded as part of the development of the Jetco subdivision. The tributaries join and then flow east under the low point in Travers Rd prior to discharging into the Whangamarino Wetland.

Development of this site, given its topography, the existing flood risk downstream of the site and its proximity to the Whangamarino Wetland (Ramsar Site) was always going to require considerable thought in regards to stormwater management.

The proposal includes creating a higher density development and increased levels of impervious surfaces over and above what was anticipated within this stormwater catchment. It also seeks to remove swales from roads. These aspects may lead to adverse impacts on stormwater management.

As part of the Te Kauwhata Structure Plan process, Council engaged Beca to provide technical comment regarding stormwater management within the structure plan area. The site was identified as being within the Travers Road Catchment and specific management options were put forward. In particular, the report advised that both water quality and quantity should be a consideration for stormwater management in this catchment and that the total impervious area of a development should be reduced to reduce stormwater flows downstream, both for flood peaks and total runoff volume. The report advised that swales for road drainage should be used where possible, although it acknowledged that gradients in some parts of the catchment may prevent their use (as is the case in some parts of the subject site).

Based on recommendations from this report, Council prepared a Catchment Management Plan (CMP) specific to Te Kauwhata. Provisions within the District Plan require adherence to this CMP.

A Stormwater Management Plan prepared by OPUS and dated July 2016 has been provided by the applicant. The report investigates options for the key stormwater infrastructure to ensure

that stormwater is appropriately treated before being discharged into the Whangamarino Wetland.

Ground soakage was considered however it was concluded that existing soils do not have the desired permeability, making on-site soakage systems an unsuitable stormwater management option.

The stormwater management system that is proposed to be employed for the subdivision will consist of:

- Rainwater tanks to be used on all residential sections throughout the development for flow attenuation of stormwater runoff from residential roofs, and sized to accommodate the 10% AEP event. The tanks will have a throttled discharge into the stormwater reticulation and an overflow discharging into the street.
- One new stormwater pond and upgrades to an existing pond on another property to attenuate and treat stormwater runoff from the sub-catchments in the subdivision. The ponds are to be sized to attenuate the 10% AEP year critical storm back to the 10% AEP green fields discharge rate.
- Wetlands located at the base of the detention basins at the east and west catchments to treat flows from the proposed development.

Suitable overland flow paths will be required across the site and from the soakage systems in particular. The lots are proposed to be elevated above the road network and overland flows from lots will drain to the roading network and eventually discharge into the Waikato River.

Stormwater design will be influenced by further geotechnical investigations and conditions of consent that the design incorporates the recommendations of any further geotechnical investigations. The system will be designed to accept the flow from upstream of the subdivision, and shall be of sufficient capacity to provide for maximum flows from possible future development areas, to the extent of development allowed as a permitted activity in the relevant zone.

Councils Development Engineer is satisfied that stormwater for the site can be managed in an acceptable manner on the proviso that a stormwater design is prepared for roads prior to the commencement of works and for new dwellings at the time of building by a suitably qualified person.

Stormwater management also impacts on the ecology of the area. The ecological effects of the proposal are addressed below.

Conclusion on Servicing

Overall, I consider that stormwater can be managed appropriately and that effects on the wider environment will be no more than minor.

8.8 Ecological Impacts

The provisions of the District Plan seek to ensure that development recognises the importance of the ecological values of the Te Kauwhata wetland environments, in particular the Whangamarino Wetland and Lake Waikare. It follows then that the ecology of the area and stormwater management is interrelated, and the way in which stormwater is managed has the ability to adversely impact upon ecology. Provisions within Appendix B of the District Plan and the Te Kauwhata Catchment Management Plan provide specific requirements for stormwater management in recognition that land within the Te Kauwhata Structure Plan Area (which includes the subject site) will be sensitive to development.

The submission by Glen Tupuhi of Nga Muka Development Trust (NMDT) expressed concern at the effects of the proposal on the natural water course leading to the Whangamarino Wetland and the Wetland itself.

At the time of the Te Kauwhata Structure Plan, Council engaged Boffa Miskell Ltd to undertake an assessment of the ecological values within the Te Kauwhata Structure Plan Area. This document ultimately influenced/informed the provisions within the District Plan and the Te Kauwhata Catchment Management Plan. Recommendations of the report acknowledged that the discharge of urban stormwater into a palustrine RAMSAR wetland in New Zealand is unprecedented and that the Whangamarino Wetland is a highly sensitive receiving environment, which demands a high level of treatment of stormwater discharges into it. The report concluded that it is difficult to set clear enforceable standards for stormwater treatment but that the ultimate aim should be to ensure that the contaminant profile of water discharging into the Whangamarino Wetland should be below the ANZECC (2000) threshold for protection of 99% of species.

Basic guidelines for stormwater practices were identified in the Boffa Miskell Report to achieve appropriate stormwater treatment. These recommendations have filtered down into the District Plan as follows:

- Stormwater should be treated as close to the source as is possible using rain tanks, rain gardens, swales and other devices.
- High quality treatment devices, such as sand filters should be used where low impact options are not available (e.g. on steeper road sections).
- A range of stormwater devices should be used in the treatment train to maximise the removal of sediments and other pollutants.
- Final settlement and scrubbing using treatment wetlands (see ARC TPI0 guidelines) should be employed prior to discharge into the Whangamarino Wetland. This will provide the added benefit of the potential capacity to isolate spill events, should they occur.

Stormwater from the proposed development will ultimately discharge into the Whangamarino Wetland. The proposal differs from the SS proposal in that swales are removed from all minor roads. To counteract this, the drainage pond within Lot 202 has increased in size to allow for higher stormwater volumes. Constructed wetlands are proposed to be located at the base of the detention basins at the east and west catchments to treat flows from the proposed development. Wetlands have been chosen due to their ability to effectively remove stormwater pollutants associated with fine to colloidal particles and dissolved contaminants. The proposed storm water control methods will act to treat storm water off roads, where that storm water may leave the site at green field rates to then enter the Whangamarino Wetland.

If consent is granted, conditions will require that the stormwater system be designed as detailed in the section above (Stormwater Management) and that the wetlands be densely vegetated using wetland species effective in nutrient removal to the satisfaction of Council. The Boffa Miskell Report provides a comprehensive list of plant species for restoration and stormwater treatment and recommendations about riparian buffers and the consent holder will be directed to refer to this document upon preparing any Planting Plans. Conditions of consent will also require planting within the road reserve with selected species that enhance the ecological significance of the area.

The NMDT submission confirmed support of the proposed stormwater management system and associated man-made wetlands and provided recommendations for measuring the impacts of stormwater discharge on the mauri (life supporting capacity) of the Whangamarino Wetland.

Conclusion on Ecological Matters

Subject to compliance with conditions of consent and Council approval of the stormwater system at detailed design stage, I consider the ecological effects of the proposal will be no more than minor.

8.9 Effects of the Proposed Staging of the Subdivision

Rule 21B.28 of the District Plan which relates to staging of development within Te Kauwhata West outlines that an activity that does not comply with a controlled activity is a non-complying activity. A controlled activity requires adherence to the staging plans shown in the District Plan (refer Figures 10 and 11 below). The staging plans cover multiple land parcels under different ownership.

All of the subject land is located within Stage I of the Staging Plan. Stage I is divided into sub-stages. Although not expressly stated in the District Plan, it is assumed the sub-stages are to occur in alphabetical order. The subject site contains land within all four sub-stages IA, IB, IC and ID.

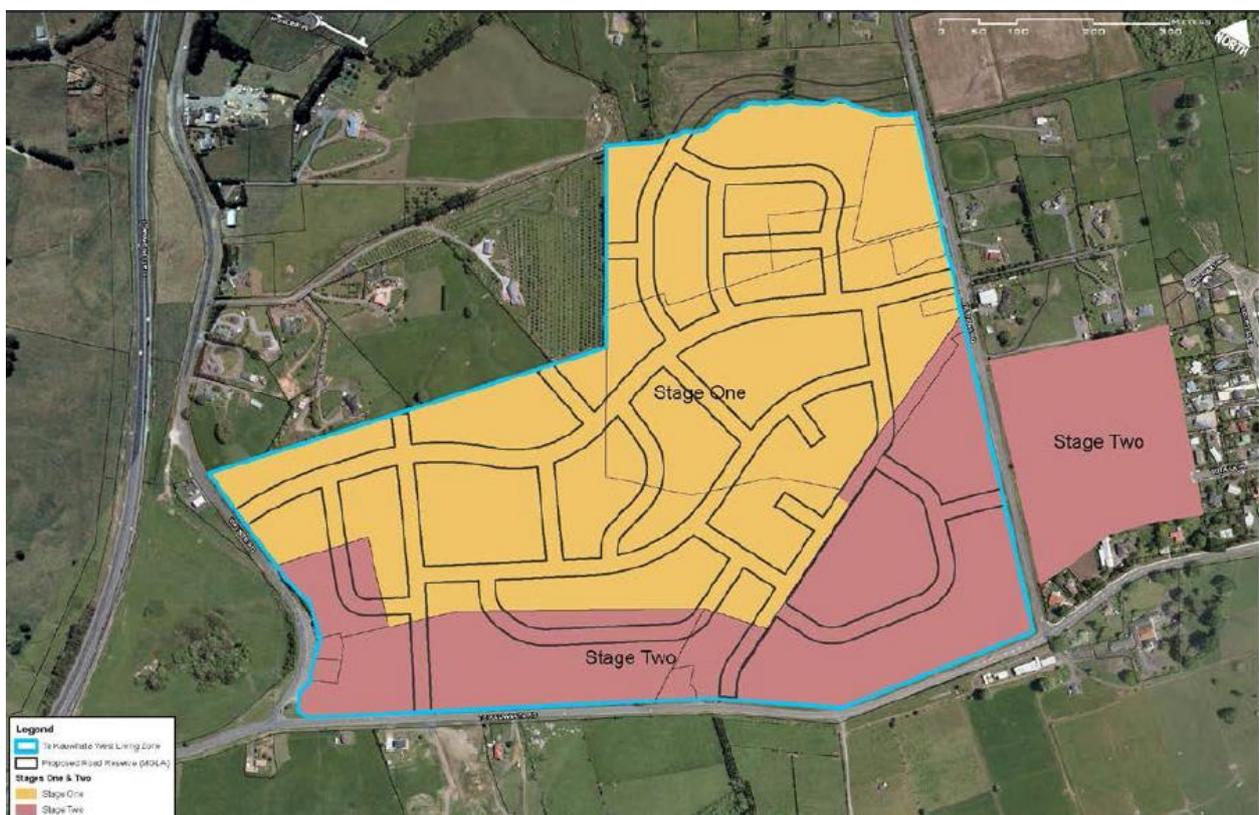


Image 10 - Te Kauwhata West Living Zone Full Staging Plan

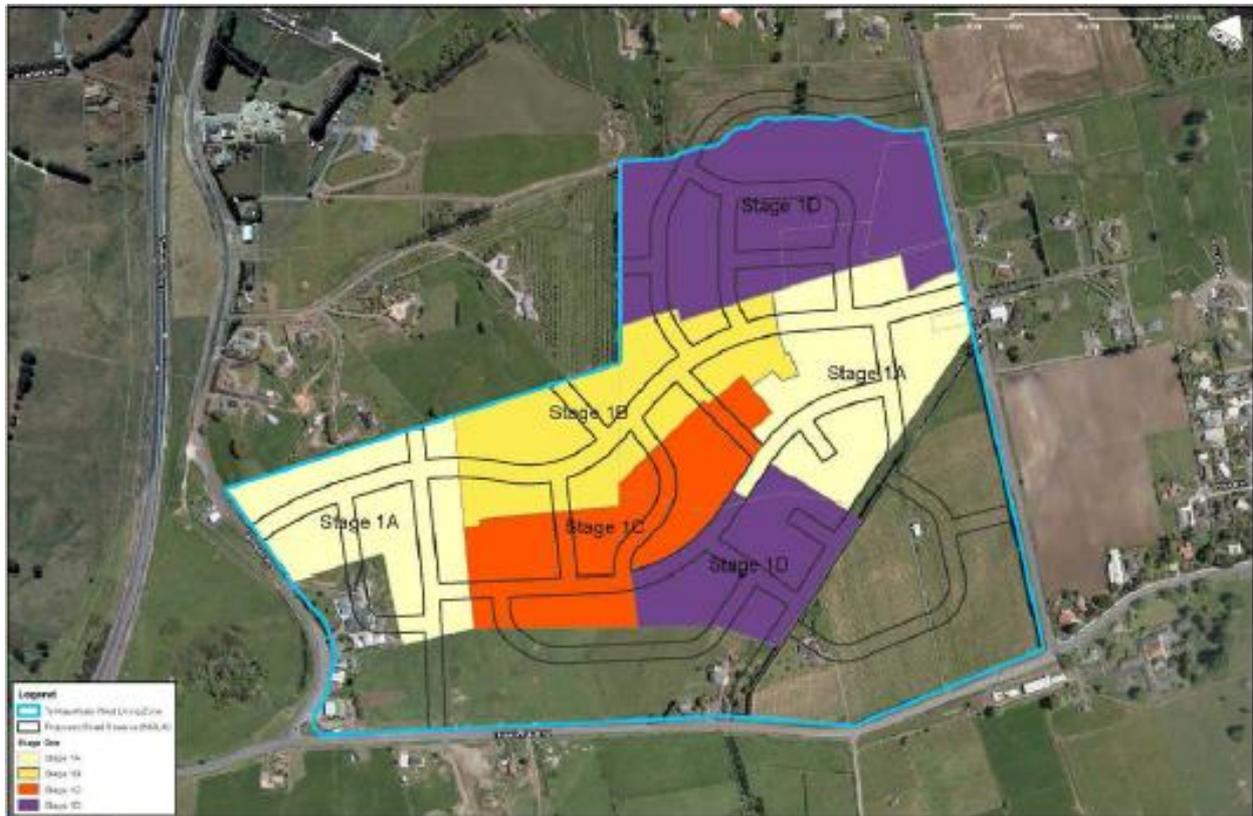


Image 11 - Te Kauwhata West Living Zone Stage One Staging Plan

The staging of the proposed subdivision (see Image 1 above) does not align with the District Plan sub-staging plan in Image 11 above.

It is understood that the staging provisions are in place to reduce the occurrence of ad-hoc development of the area, to provide a period of time during which residents have an opportunity to gradually adapt to the change in landscape of the area, allow time for street trees and planting within the lots to mature, softening views of the subdivisions as the vegetation develops and to ensure appropriate infrastructure is available for the proposed levels of development. In addition, the staging rule was to ensure the supply of residential land is linked to demand. There were concerns that an oversupply of properties onto the market could result in lower section prices, piecemeal development and adverse amenity.

Although the subdivision is shown as a staged subdivision, the Applicant has asked Council not to restrict the commencement of each stage as long as appropriate infrastructure is in place to service the amount of development at any one time and Council has legal access to infrastructure (e.g. stormwater ponds and wastewater pump stations) for maintenance purposes. By contrast, the SS proposal required each stage to be completed in numerical order.

When considering adverse effects anticipated by the rule, the following is relevant.

- The site is divided into two portions, east and west, by a north to south trending ridgeline. As such, stormwater will drain to the east or west depending on which side of the ridgeline the roads and/or lots are located. The sub-staging plan does not take this into account and for this reason I think that the staging plan was not entirely workable in practice.
- With this scale of development it is reasonable to assume that the release of land within the site will not occur all at one time, but rather as finances, property sales and ability to undertake the physical works (possibly seasonal) will allow.
- As stated within Rule 21B.28: Staged Subdivision, the staging rules do not restrict the installation of services or the construction of roads across the whole site which would require significant earthworks and a change to the landscape in any case.

- Conditions of consent can ensure that earthworked areas are top soiled and re-grassed within a short timeframe (six months) of completion of works. This will mean that any adverse visual effect created by sporadic earthworks and bare earth will be temporary.
- If consent is granted, conditions will require that infrastructure is available or is constructed prior to development to cater for the level of development. Councils Water Services Team Leader has confirmed that the existing water supply infrastructure currently has capacity to service the 163 lots and the proposed staging will not affect the ability to provide each lot with water supply. The subject property is divided into two catchment areas; east and west. The western catchment reticulation will connect to a new pumping station as part of Stage IA of the subdivision. The eastern catchment will connect to an existing pumping station on the adjacent Jetco property as per the Te Kauwhata Structure Plan which has capacity to service this catchment.
- The proposal supplies infrastructure (i.e. connecting roads, particularly the collector road) to adjoining properties as intended within the staging plan of the district plan.
- Parts of Stages IA, IB and IC have already be constructed within the neighbouring property to the northeast ahead of this subdivision meaning the development is not an isolated residential development but rather an extension of the existing residential development from this property.
- The housing market at the time the rule was introduced was markedly different to the current property market, which is experiencing a high demand for sections in close proximity to Auckland and Hamilton, particularly as a result of the unaffordable Auckland property market. As a result, sections are attracting high prices and a high standard of development compared to 5 years ago.

Conclusion of Effects of Staging of the Subdivision

Conditions will require that appropriate infrastructure is available for the scale of development and that earth worked areas are re-grassed within a short time frame. If the market at time of development is similar to the market now, it is unlikely there will be an oversupply of properties. It is in the best interests of the developer to meet buyer demand and if the market were to slow it is reasonable to assume that the release of properties will also decrease.

In the unlikely event that the whole site is developed at the same time, I acknowledge that this will reduce the resident's opportunity to gradually adapt to the change in landscape and for street trees and planting to mature. I consider this is a temporary effect and that any adverse effect associated with the staging of development will be no more than minor.

8.9 Contaminated Land

Historically, the subject land has been used as an experimental farm, established in Te Kauwhata in 1886, for researching different crops, including vegetables, fruit trees, berry fruits and grapes classed as HAIL activities.

As part of the Silverspur consent, resource consent for a Discretionary Activity under the NES was sought and granted. Conditions of that consent required that a Detailed Site Investigation be provided for approval by Council. The Applicant has commenced earthworks activities under the SS consent and provided the DSI to Council. The DSI provided recommendations for remediation and remediation works have been undertaken at the site which included mixing and blending of identified contaminated soils for removal or reuse on the site. Conditions of the SS consent also required that:

- (a) Following initial remediation an interim soil validation report (SVR) be provided to Council for approval to confirm contaminant levels; and,
- (b) Following completion of bulk earthworks and the re-spreading of material onsite a final site validation report be provided to Council for approval. The final SVR was required to include:

- (i) Validation results taken from samples from each residential lot to ensure each lot can meet the required NES standards and is fit for purpose;
- (ii) Remediation of the former stockyard site and disposal to a licensed landfill facility; and,
- (iii) Validation results taken from the former stockyard following remediation.

The Applicant has undertaken initial remedial earthworks under the SS consent and submitted the interim SVR which has been approved by Council. For ease of administration, if this consent is granted, conditions of consent will require that the SS consent be wholly surrendered and the outstanding remediation works be undertaken.

I consider that if these conditions of consent are implemented, the effects relating to contaminated land will be no more than minor.

8.11 Conclusion on Effects

Subdivision

In my opinion, the adverse effects associated with the layout and design of the subdivision (density, variation of lot sizes, rear lots, rights-of-ways), the reduction in size of the Hilltop Reserve resulting in steep batter slopes and reduced usable space and the level of earthworks across the site all adversely impact on the landscape, amenity and urban design in a way that is more than minor on the environment. The provisions of the District Plan provide the context for the assessment of effects. They provide an indication of the level of effects that are anticipated and considered appropriate within specific areas/zones within the district. With this in mind, the scale and significance of the District Plan non-compliances associated with this proposal indicates to me that the landscape, amenity and urban design effects associated with the proposal are significant, are not anticipated by the Plan or the community who had important input into the provisions through an Environmental Court appeal, and clearly more than minor.

Land Use Activities

I consider the effects associated with creating four show homes within four of the consented lots to be minor with the imposition of conditions. I consider that the amenity, landscape and urban design effects associated with earthworks activities to create steep engineered sides within the portion of the Hilltop Reserve in the neighbouring property are more than minor. I consider the effects associated with allowing for a blanket building coverage and impervious surfaces within residential lots are more than minor.

9.0 RELEVANT PLAN PROVISIONS – S104(1)(b)

In accordance with section 104(1)(b) of the RMA, the following assessment considers the proposed subdivision and land use activities in terms of relevant provisions of policy statements and plans. The focus is to establish if the proposal is consistent with the objectives and policies of relevant plans in addition to the issues, environmental outcomes, rules and explanations and reasons.

9.1 National Policy Statement

9.1.1 NES Urban Development Capacity 2016

This National Policy Statement on Urban Development Capacity 2016 (NPS) provides direction to decision-makers under the Resource Management Act 1991 (RMA) on planning for urban

environments. It recognises the national significance of well-functioning urban environments, with particular focus on ensuring that local authorities, through their planning, both:

- enable urban environments to grow and change in response to the changing needs of the communities, and future generations; and
- provide enough space for their populations to happily live and work.

This can be both through allowing development to go “up” by intensifying existing urban areas, and “out” by releasing land in greenfield areas.

This NPS aims to ensure that planning decisions enable the supply of housing needed to meet demand. The overarching theme of the NPS is that planning decisions must actively enable development in urban environments, and do that in a way that maximises wellbeing now and in the future.

In saying this, the NPS does not anticipate development occurring with disregard to its effects on the environment. The NPS expressly acknowledges that local authorities still need to consider a range of matters in deciding where and how development is to occur, including the direction provided by the NPS.

In this case, the provisions of the District Plan relating to the Te Kauwhata West Living Zone were introduced as part of a public process and reflect many of the desires of the Te Kauwhata Community in terms of what they envisaged development to look like in this area. The NPS was not in effect at the time the District Plan rules were made operative but in any case, other rules within the District Plan allow for higher density residential development within Te Kauwhata. The rules within the District Plan convey the most recent expectations of the Te Kauwhata community and because the proposal is significantly non-compliant in many respects, I consider the proposal does not respond to the needs of the community and that the Te Kauwhata community most likely consider that developments that align with the District Plan rules would provide enough space for them to happily live and work. This is evident from the submissions received from people within the Te Kauwhata community who oppose the proposal in relation to creating smaller lots, a higher density development, and an increased number of rear lots. Overall, whilst the NPS seeks higher intensification of existing urban environments where necessary, this does not preclude consideration of the effects of creating a higher density environment in this zone. The Applicant has not demonstrated that there is a need for intensification in this area and based on the operative District Plan rules which provide context for the level of effects that are appropriate within this zone, I consider the effects to be more than minor.

Overall, for the reasons given above, I consider the proposal is contrary to the NPS.

9.2 National Environmental Standards

9.2.1 National Environmental Standard for Managing Contaminants in Soil to Protect Human Health

Regulation 5(5) of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES) describes a change in land use as an activity to which the NES applies where an activity that can be found on the Ministry for the Environment Hazardous Activities and Industries List (HAIL) has occurred.

Regulation 6 of the NES specifies that an applicant must establish if any HAIL activities have occurred on the subject site. The applicant can do this by adopting one of two methodologies:

1. Review of all relevant council records including dangerous goods files, property files, registers, databases, resource consent databases, records available from Regional Council;

2. Preliminary Site Investigation undertaken by a suitably qualified and experienced practitioner in accordance with the current Ministry for the Environment's Contaminated Land Management Guidelines No. 1 Reporting on Contaminated Sites in New Zealand.

In this case, the subject land has been used as an experimental farm, established in Te Kauwhata in 1886, for researching different crops, including vegetables, fruit trees, berry fruits and grapes classed as HAIL activities.

Resource consent for a Discretionary Activity under the NES was sought and granted as part of the Silverspur consent. Conditions of that consent required that a Detailed Site Investigation be provided for approval by Council. The Applicant has provided the DSI to Council. The DSI provided recommendations for remediation and remediation works have been undertaken at the site which included mixing and blending of identified contaminated soils for removal or reuse on the site. Conditions of the SS consent also required that:

- (a) Following initial remediation an interim soil validation report (SVR) be provided to Council for approval to confirm contaminant levels; and,
- (b) Following completion of bulk earthworks and the re-spreading of material onsite a final site validation report be provided to Council for approval. The final SVR was required to include:
 - (i) Validation results taken from samples from each residential lot to ensure each lot can meet the required NES standards and is fit for purpose;
 - (ii) Remediation of the former stockyard site and disposal to a licensed landfill facility; and,
 - (iii) Validation results taken from the former stockyard following remediation.

The Applicant has commenced works under the SS consent and undertaken initial remediation works and submitted an interim SVR (as required by conditions of the SS consent) which has been approved by Council. For ease of administration, if this consent is granted, conditions of consent will require that the SS consent be wholly surrendered and the outstanding remediation works be undertaken as part of the TKL consent.

9.3 Waikato Regional Policy Statements

The Waikato Regional Policy Statement (RPS) provides an overview of the significant resource management issues of the region and puts in place objectives, policies and methods to achieve integrated management of the natural and physical resources of the region.

The Waikato Regional Policy Statement became operative in May 2016.

Policy 6.15 Density Targets for Future Proof Area

Policy 6.15 seeks to ensure that over time, urban development will become more compact through the promotion of development density targets. This is to improve viability of public transport, walking and cycling, thereby reducing energy demand and reducing the need for future transport infrastructure development. Other benefits of this approach include reducing transport impacts on air quality, reducing carbon emissions, improving efficient use of water infrastructure, reducing urban sprawl onto high quality farm land and reducing other adverse effects of urban development, such as reverse sensitivity impacts on existing land uses and limitations on access to mineral resources. The methods are to ensure this policy is implemented through provisions in district plans and through advocacy with respect to development proposals.

In Te Kauwhata the density targets seek to achieve 12-15 households per gross hectare. The subject site is 16.52ha in size. To achieve this target the subdivision would need to create a

minimum of 198 residential lots (12 x 16.52). The proposal seeks to create 163 residential lots and does not meet this requirement.

However, within Te Kauwhata, the District Plan rules allow for higher density development within other residential zones, including down to 450m² in the Living Zone. It is likely then that if all residential opportunities are realised, the density targets would be achieved. Notwithstanding this, the rules within the District Plan went through a public process with input from the Te Kauwhata Community and before the density targets were made operative.

The proposal will create residential development in an area in close proximity to an established town which will be supported by appropriate infrastructure and overall, I consider that the proposal is not contrary to the relevant provisions within the Waikato Regional Policy Statement.

Nga Muka raised the relevant provisions in the WRPS as follows:

- Obj 3.8: Relationship of Tangata Whenua with the Environment
- Obj 3.13: Mauri and Values of Fresh Water Bodies

Subject to continued consultation with and input from NMDT, I consider the proposal will not be contrary to the above provisions of the WRPS.

9.4 Waikato Regional Plan

The Waikato Regional Plan contains policies and methods to manage the natural and physical resources of the Waikato region. The proposal has found to be not contrary to the provisions of the WRPS. It follows therefore, that the proposal is not contrary to the WRP as it implements the WRPS.

9.5 Operative Waikato District Plan (Waikato Section) 2013

An assessment of this proposal against the Operative Waikato District Plan (Waikato Section) relevant objectives and policies is provided within APPENDIX I.

9.5.1 Summary of Objectives and Policies

This section of the report has examined whether the proposed subdivision and land use is contrary to relevant provisions of the District Plan and other relevant planning documents. The proposal has been found to be contrary to the NPS and a number of District Plan provisions, some of which, in my opinion, are fundamental in the context of what the District Plan is trying to achieve within the Te Kauwhata West Living Zone; being those provisions which seek to create high amenity developments, retain the existing Te Kauwhata Village character and retain the natural landform under Chapters 1A, 13 and 15A. The provisions within these chapters (including the reasons and explanations), provide clear direction that density of development, the number of rear lots, and the extent of earthworks and retaining across the site can contribute to reduced amenity of a location. In regard to these matters, I consider that the outcomes on the environment arising from the proposal not meeting these objectives and policies are significant and far outweigh those objectives and policies that can be met by the proposal.

9.5.2 Conclusion on Relevant Plan Provisions

On balance, I consider that the proposal is contrary to the relevant plan provisions due to the significance of the adverse landscape, amenity and urban design effects which override the provisions the proposal is not contrary to.

10.0 SECTION 104(1)(c) – OTHER MATTERS

When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to any other matter the consent authority considers relevant and reasonably necessary to determine the application. These matters are discussed below.

10.1 Waikato Tainui Environment Plan

The plan is to provide a map or pathway that will return the Waikato-Tainui rohe to the modern day equivalent of the environmental state that it was in when Kiingi Taawhiao composed his maimai aroha. To do this, the plan seeks to:

- 1 provide the overarching position of Waikato-Tainui on the environment (s1.3.1);
- 2 consolidate and describe Waikato-Tainui values, principles, knowledge and perspectives on, relationship with, and objectives for natural resources and the environment (s1.3.2);
- 3 underpin the development of a consistent and integrated approach to environmental management within the Waikato-Tainui rohe (s1.3.2);
- 4 describe Waikato-Tainui environmental issues (s1.3.4);
- 5 provide tools to enhance Waikato-Tainui mana whakahaere and kaitiakitanga, particularly when participating in resource and environmental management through (s1.3.5):
 - (a) influencing the development of all environmental policies and plans that affect Waikato-Tainui;
 - (b) establishing a framework for resource and environmental management to support tribal members, whether as whaanau, marae, hapuu, or whatever grouping Waikato-Tainui, from time to time, choose to adopt;
 - (c) providing mechanisms to restore and protect the natural environment of Waikato-Tainui, whilst recognising the reasonable needs of local communities;
 - (d) actively contributing to the co-management of the Waikato river;
 - (e) influencing local and national decision makers;
 - (f) providing a guide for resource users or developers in the Waikato-Tainui rohe;
 - (g) affecting how and where development may occur; and
 - (h) providing clear and consistent issues statements, policies, and methods to manage natural resources.
- 6 provide guidance to external agencies regarding Waikato-Tainui values, principles, knowledge and perspectives on, relationship with, and objectives for natural resources and the environment (s1.3.6).

As the local representative of Waikato-Tainui, the Applicant has consulted with Nga Muka Development Trust who have provided a submission in support of the application. NMDT seek continued consultation throughout the subdivision to ensure the objectives of the Waikato-Tainui Environment Plan (WTEP) are upheld. Subject to the continued consultation with NMDT is consider the proposal will not be contrary to the WTEP.

10.2 District Plan Integrity and Precedent Effect

There is no statutory provision for precedent effect or adverse effects on the integrity of the District Plan to be considered. These are formulated by the Courts and commonly used to reinforce principles and aid in assessments.

District Plan Integrity

The impact a grant will have on the integrity of the Operative Waikato District Plan is a matter of concern in this case. Plan integrity reflects the public confidence in the consistent administration of the plan. In my view, the integrity of the District Plan provisions relating to the

minimum and average lot size and lot size per neighbourhood block and the restrictions on the number of rear lots, earthworks and retaining walls across the site within the Te Kauwhata West Living Zone will be seriously compromised if the proposal is granted.

In discussion with Council's legal adviser, I am advised plan integrity was considered by the Environment Court (EC) in *Berry v Gisborne DC* [2010] NZEnvC 71. It referred to the concepts of both plan integrity and precedent and cautioned the use of such factors. Plan integrity rises when:

- the proposal clearly clashes with important plan provisions; and
- it is likely that further applications will follow which are materially indistinguishable and equally incompatible with the District plan.

In this case, I consider the proposal clashes with principal District Plan provisions requiring a minimum and average lot size, a variety of lot sizes per neighbourhood block, restrictions on the number of rear lots and restrictions on earthworks and heights of retaining walls within the Te Kauwhata West Living Zone. The purpose of these rules are to ensure amenity values, the existing Te Kauwhata Village character and the natural landform remain intact within locations. The importance of these provisions is set out in Chapter 29: Explanations and Reasons within the District Plan as follows:

Allotment Size Te Kauwhata Structure Plan area:

The Te Kauwhata Structure Plan area comprises of a number of discrete Living Zone areas that allows each to have standards specific to its topography and setting. The existing district-wide standards are not considered appropriate for the newly zoned areas as they would not achieve the objectives of the Te Kauwhata Structure Plan. The new Living Zones are: Te Kauwhata Living, Te Kauwhata Living (New Residential), Te Kauwhata West and Te Kauwhata Ecological. Te Kauwhata Living and Te Kauwhata Living (New Residential) are the same as those currently zoned in the District Plan with minor changes to the rules. The proximity to the town centre to these areas reflects the standards already in place. New standards apply to the Te Kauwhata West area of larger lot sizes that reflect the topography and land stability, the need to incorporate low impact features on site, the village character and the open space amenity look and feel...The rules require developers to ensure variation in lot sizes to provide choice for prospective purchasers, and to minimise the number of rear lots to maintain neighbourhood amenity. Rear lots should only be provided where the original allotment shape makes it impractical for all new lots to have standard road frontage. Minimising the amount of land required for roads, and hence maximising the number of new lots that can be created, and minimising road construction costs are not adequate reasons for creating rear lots.

Rear lots:

Rear lots are not favoured because they do not have direct visual connection to the road and hence do not benefit from the open space amenity associated with the road and do not contribute towards 'eyes on the street'. Accesses to rear lots should not be on both sides of a front allotment because they detract from its amenity. Shared rights-of-way are not favoured because they detract from the overall streetscape.

Subdivision earthworks:

In the Te Kauwhata Structure Plan area particular attention is given to protecting the overall landform. This is being achieved through earthworks associated with subdivision being regulated, and limits on retaining walls being introduced. Subdivisions should be designed to integrate into the landform and not require major earthworks to create roads or building platforms. Retaining walls along road frontages, wherever they are located, should be low, and attention should be given to their appearance, including materials and design, to ensure an attractive appearance.

In my opinion, the proposal fails to acknowledge the reasons or importance of creating larger

lots, minimal rear lots and protecting the natural landform in the Te Kauwhata West Living Zone as detailed within the District Plan. The District Plan provides clear direction on these matters and sets expectations for the level of density and design of any subdivision within the subject site. Whilst I acknowledge there would always be challenges with this site given its topography, I do not consider the Applicant has demonstrated reasons for such significant departures from the District Plan provisions.

Council have granted consent for three other subdivisions within the Te Kauwhata West Living Zone (including the SS consent); all of which had similar non-complying aspects as follows:

- SUB0163/14: consent to create 130 residential lots at 24 Wayside Road (subject site) with non-compliances associated with frontage, allotment size, rear allotments, boundary width along the Country Living Zone, earthworks, off road walkways, staging of the subdivision access and entrances, and indicative roads.
- SUB0107/17: to create 62 residential lots at 40 Te Kauwhata Road with non-compliances associated with frontage, allotment size, rear allotments, earthworks, boundary with Country Living Zone, Staging of the subdivision, road width.
- SUB0073/14 (and subsequent variations/applications) – consent to create 78 residential lots at 132 Travers Road with non-compliances associated with frontage, allotment size, rear allotments, earthworks, boundary with Country Living Zone, staging of the subdivision, indicative roads.

However, the difference between the consented subdivisions above and this application is the sheer scale and significance of the non-compliances associated with the proposal which, in my opinion, create adverse landscape, amenity and urban design effects that are unacceptable.

The application states that the reason for seeking consent for the additional 33 lots is to enable reduced road gradients, a fewer number of high retaining walls required and better access to lots and building platforms. In my opinion, the Applicant has not demonstrated that other more compliant subdivision layouts/designs are not valid. In reliance on my experts opinions, I consider that there may be alternative options available to the Applicant that have not been explored/investigated and that may provide better outcomes in terms of landscape, amenity and urban design and as such, I am not convinced that the reasons for seeking additional yield are legitimate. I note schedule 4, clause 6(1)(a) requires an Applicant to provide an assessment of any possible alternative locations or methods for undertaking activities if it is likely the activity will result in significant adverse effects on the environment. I would have thought the scale and significance of non-compliance associated with this application would signal to the Applicant that the effects of the proposal may be significant. A number of properties within the vicinity of the site of similar topography to the subject site have the ability to be subdivided and are also subject to the provisions within the Te Kauwhata West Living Zone. If this application is granted, I consider it is likely that further applications will follow which are materially indistinguishable from this application and equally incompatible with the District Plan.

In my view, the conflict with the district plan provisions relating to minimum and average lot size, the number of rear lots, and retaining the natural landform in the Te Kauwhata West Living Zone is of such significance that granting consent to the application would undermine the integrity of the District Plan as a statutory planning document on which the community is entitled to rely upon. The District Plan clearly signals the expectations in relation to these matters. If the proposal were to be granted, I consider the public's perception of how Council administers the District Plan will be severely impacted. It would signal that Council may be prepared to let future developments occur in the Te Kauwhata West Living Zone where no special circumstances warrant smaller lots, higher density developments and/or degrading the natural landform.

The public relies on the District Plan to provide guidance on how development proposals will

be assessed. Proposals which closely comply with the District Plan are likely to be perceived by the public to be granted, while those that significantly depart from the District Plan are likely to be perceived by the public to be declined. Granting consent to this proposal, which is clearly contrary to the District Plan provisions (without there being anything too unique (other than possibly steeper site topography in some areas than other sites within the Te Kauwhata West Living Zone) or having unusual circumstances), will provide conflicting impressions to the public and adversely affect their perceptions of Council's consistent administration of the Waikato District Plan – Waikato Section. I note that some of the more dense areas of the proposed subdivision occur within land that is not steeper than neighbouring properties.

For the above reasons, I conclude granting consent will undermine the integrity of the District Plan relating to those matters listed above.

Precedent effect

I acknowledge that in the strict sense, a grant of resource consent has no precedent risk. This is because each application for resource consent must be considered on a case by case basis, on its own merits. However, Council's legal adviser has advised the Court of Appeal has acknowledged that granting one application may have an influence on how a later application should be dealt with in that the consistent application of resource management principles should result in like applications being treated alike.

The current application is for a non-complying activity. The High Court has confirmed that precedent effect is a legitimate consideration for non-complying activities (and also discretionary activities).

The proposal seeks to create:

- 67 lots which cannot comply with the minimum 650m² lot size;
- An average lot size of 679m² where the Plan requires an average of 875m²;
- A significant number of rear lots within 7 of the 11 neighbourhood blocks where the Plan requires no more than 10% rear lots (between 11- 46%);
- A significant number of smaller lots within each neighbourhood block where the Plan requires a minimum of 50% above 800m² (between 0-11%) and 25% above 900m² (between 0-5%);
- A significant number of lots which cannot contain either a compliant building platform or a 200m² single level dwelling as a permitted activity (i.e. 27);
- Significant earthwork cuts, flattening of sections and retaining walls where the Plan encourages minimal earthworks.

The above non-compliances result in a discretionary activity status, which means Council has no restrictions on matters it considers in its assessment of effects. In the Te Kauwhata West Living Zone, there is an expectation of a high degree of amenity and privacy expected from large lot residential development and an expectation that the natural character, including the natural landform, is retained. This high degree of amenity and privacy and natural character is achieved by maintaining larger lot sizes which allow for generous outdoor living space and landscaping, reducing rear lots so as not to detract from the streetscape and reducing earthworks and retaining walls so that development is integrated into the land. This in turn ensures a relatively low level of density of development, avoiding building domination of the landscape, larger lots which allow for battering and buildings which are built into the land.

There are a number of sections within the Te Kauwhata West Living Zone that can be subdivided and will be subject to the same rules as this proposal and that have similar topographical constraints. I am concerned that if this consent is granted, other subdivision applications may apply for similar non-compliances. The flow on effect is likely to result in

cumulative adverse effects in terms of amenity, landscape and urban design and overall location density.

I do not consider there are any other unique aspects of this application which take the proposal outside the generality of cases or any clear distinction between the subject site and application and that of other sites and applications. I acknowledge that the land within the subject site is likely to be more challenging in terms of its topography from other sites, however, this site is larger than other sites which counteracts this aspect in relation to other properties within the Te Kauwhata West Living Zone. Therefore, if Council were to grant the current application in the Te Kauwhata West Living Zone, on a site that is, in resource management terms, not markedly different from other sites in the zone, then it is more likely than not that other applications seeking to depart from similar provisions of the District Plan will be made in the future in reliance on the grant, thereby creating a precedent risk.

The increasing demand for residential lots in the district, including in Te Kauwhata, together with the increased value of each lot, means developers will seek to create smaller lots if this application is granted as it is in their financial interests to do so.

Therefore, for the reasons above, I consider that granting consent to this proposal will set a precedent for other similar developments in the Te Kauwhata West Living Zone.

10.3 Te Kauwhata Community Plan

The Te Kauwhata Community Plan 2003 (TKCP) is a relevant matter under s104(1)(c). The TKCP is a priority list of desired works and activities that the Community Committee has collected from the public. Through the TKCP the community have expressed the following relevant desires:

- Offer a variety of lot sizes while retaining rural features such as trees and open spaces;
- Control the amount of infill housing to retain a more open feel for urban areas;
- Set aside reserves in areas likely to be subdivided for example Travers Road, Wayside Road and Te Kauwhata Road;
- Consider more roadside planting;
- Recognition of the significance of the Waikato River in terms of the local economy and culture and the importance of safeguarding the quality of the waterways and wetlands for future generations;
- Maintaining the village aspect of Te Kauwhata as a key theme that will influence the scale and style of development that residents wish to see occur.

Whilst the proposal will not compromise the waterways and wetlands within the area subject to compliance with conditions of consent, and will provide a public reserve, the proposal will not achieve the other relevant desires of the community as listed above. This is achieved through development that closely aligns with the District Plan provisions of which the public also had input into.

10.4 SUMMARY OF S104(1)(C)

The conclusions reached under s104(1)(c) in regards to other matters are as follows:

- the proposal is not contrary to the Waikato-Tainui Environmental Plan;
- the proposal undermines the integrity of the District Plan;
- the proposal sets a precedent for other applications.
- the proposal is predominantly inconsistent with the Te Kauwhata Community Plan.

11.0 S104D CONCLUSION

As mentioned in section 5 of this report above, Council has no jurisdiction to consider the merits of a non-complying activity unless it can first pass one of the two gateway tests under section 104D of the RMA – either that the adverse effects of the activity on the environment will be minor; or the application will not be contrary to the objectives and policies of the relevant plan. In this case, the relevant plan is the Waikato District Plan.

Section 8 in my report assessed the adverse effects of the proposal under section 104(1)(a) of the RMA. In section 8.11 above, I concluded that the adverse effects of the proposal on the landscape, amenity and urban design are more than minor on the environment. Accordingly, the proposal is unable to pass the first threshold test set out in section 104D(1)(a).

Section 9 of my report assessed the proposal against the objectives and policies of the District Plan. In section 9.5.2 above, I concluded that the proposal is overall contrary to the objectives and policies of the Waikato District Plan.

Therefore, if the Commissioner agrees with my assessment that the proposal is unable to pass either of the gateway tests in section 104D(1)(a) or (b) of the RMA, Council has no jurisdiction to proceed to consider the merits of the application under section 104. This means the application must be declined in accordance with section 104D.

If however, the Commissioner disagrees with my assessments under 104D(1)(a) or (b) of the RMA, I will proceed with my assessment under s106 and Part 2 matters.

12.0 SECTION 106 – CONSENT AUTHORITY MAY REFUSE SUBDIVISION CONSENT

The land will not be subject to material damage by erosion, falling debris, subsidence, slippage or inundation from any source and,

Any subsequent use that is likely to be made of the land is not likely to accelerate, worsen, or result in material damage to the land, other land, or structure by erosion, falling debris, subsidence, slippage, or inundation from any source and,

Sufficient provision has been made for legal and physical access to each allotment created by the subdivision and,

If consent were to be granted, conditions of consent will ensure that the effects referred to above are avoided, remedied or mitigated.

Subject to compliance with conditions of consent if consent is granted, this proposal complies with Section 106 of the RMA and does not prevent the grant of consent.

13.0 ASSESSMENT OF PART 2 MATTERS

This part of the report examines the purpose and principles of Part 2 RMA as set out in sections 5, 6, 7 and 8. All of the section 104 analysis conducted in the previous parts of this report is subject to the relevant matters in these sections (i.e. the purpose and principles of the Act hold a pre-eminent position).

Section 8: Treaty of Waitangi

Section 8 requires the Council to take into account principles of the Treaty of Waitangi. The RMA does not go so far as to define the principles of the Treaty that should be taken into account, but the Court of Appeal, the Waitangi Tribunal, and statements by Government, indicate that the following are appropriate principles:

- early consultation and acting in good faith;
- the principle of partnership; and,
- the need for active protection.

The proposal does not offend section 8.

Section 7: Other Matters

Section 7 of the Act sets out other matters that Council is to have particular regard to in achieving the purpose of the Act. The matters of relevance to this application are:

- (b) *the efficient use and development of natural and physical resources*
- (c) *the maintenance and enhancement of amenity values;*
- (f) *maintenance and enhancement of the quality of the environment*

Whilst the land is zoned for residential purposes and will be used and developed this is considered an efficient use of the land. However, in this case, this comes at the expense of maintain and/or enhancing amenity values and the quality of the environment as dictated by the provisions of the District Plan. I consider I have had regard to those relevant matters set out under section 7 and conclude the proposal is inconsistent with sections 7(c) and (f).

Section 6: Matters of National Importance

Section 6 of the Act requires a number of matters of national importance to be recognised and provided for. Of relevance to this application are the following matters:

- (a) *the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (b) *the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (d) *the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (e) *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga:*
- (f) *the protection of historic heritage from inappropriate subdivision, use, and development:*

I consider matters (a) and (e) are relevant to the proposal as follows:

The preservation of the natural character of the coastal environment, wetlands, and lakes and rivers

Section 6(a) requires that Council shall recognise and provide for "the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development".

Stormwater discharge will be managed appropriately via conditions of consent to ensure the natural character of the wetlands and lakes within the vicinity of the site will be protected. A discharge permit is required to be obtained from regional council and stormwater discharge will need to be in accordance with conditions of this consent.

The Relationship of Maori and their Culture and Traditions

Section 6(e) requires that Council shall recognise and provide for "the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga". The same comments as made in section 1.1.1 and 1.2.1 above apply, and it is considered that conditions relating to archaeological finds will assist in avoiding remedying and mitigating any adverse effects on any potential sites of significance to Maori. As such, it is considered that the proposal will not compromise this section 6(e) matter of national importance.

Iwi have identified the importance of the waterways and wetlands within the area. The Applicant has consulted with Nga Muka Development Trust who have signalled their support for the application subject to continued consultation. Any taonga/ historic heritage found at the site will be managed in accordance with Heritage NZ's protocols.

I consider the matters under section 6 have been recognised and provided for and I conclude the proposal is consistent with these matters.

Section 5: Purpose

As stated above, sections 6, 7 and 8 all serve to inform the consideration of whether the purpose of the Act under section 5 will be achieved by the proposal. Section 5 is set out as follows:

- 5(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- 5(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while -*
- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

Section 5(2)(a)

I consider the application is generally consistent with section 5(2)(a) for the following reasons. Through the RPS and the Waikato District Plan – Waikato Section, the management of the land resource has been prescribed to enable people and communities to provide for their social, economic and cultural well-being and their health and safety.

There is a clear growth hierarchy specifically detailed within those documents. In particular, the Waikato District Plan recognises that the appropriate places for future residential growth are predominantly within:

- villages,
- towns,
- other defined growth nodes.

The proposal for 163 residential lots is within the Te Kauwhata West Living Zone. In this case the proposal will establish in a location anticipated for residential development, and hence will sustain the natural land resource.

Section 5(2)(b)

The proposal is to subdivide land for residential purposes in a location ear marked under the Waikato District Pan for this use, and therefore will not be detrimental to safeguarding the capacity for air, water, soil or ecosystems.

Compliance with appropriate conditions relating to water supply, stormwater and wastewater disposal would ensure that life-supporting capacity of air, water, soil and ecosystems will be safeguarded. I therefore consider that this proposal will be consistent with section 5(2)(b).

Section 5(2)(c)

Section 5(2)(c) requires that any adverse environmental effects be avoided, remedied or mitigated. As examined previously in this report, the application has the potential to adversely affect urban design, the landscape and amenity values in Te Kauwhata due to undersized lots and increased density of development which has the potential to erode existing and established but also anticipated amenity values currently enjoyed by the Te Kauwhata Community. As such, I am of the view the proposal is inconsistent with section 5(2)(c).

Even after considering all the factors relating to the proposal, some of which can achieve the purpose of the Act, I consider that Section 5 of the Act would be better met by refusing the application given the potential significant risks associated with amenity, landscape and urban design generated from the proposed activity.

If the applicant were to adopt an alternative application that more closely aligned with the relevant subdivision provisions of the District Plan, my judgement under Part 5 may alter.

14 PART 2 – OVERALL BROAD JUDGEMENT

Part 2 allows for a broad overall judgement to be made, having regard to the competing considerations under s104(1)(a), s104(1)(b) and s104(1)(c) to achieve the single purpose of the Act. Such a judgement allows for the comparison of conflicting considerations and the scale or degree of them and their relevant significance or proportion in the final outcome.

The proposal is considered to be contrary to the NPS Urban Development Capacity.

The proposal is not considered to be contrary to the WRPS or the WRP.

The subdivision effects of the proposal are considered to be more than minor in relation to landscape and amenity effects and urban design under s104D(1)(a). In my opinion, the adverse effects associated with the layout and design of the subdivision (density, variation of lot sizes, rear lots, rights-of-ways), the reduction in size of the Hilltop Reserve resulting in steep batter slopes and reduced usable space and the level of earthworks across the site all adversely impact on the landscape, amenity and urban design in a way that is more than minor on the environment. The provisions of the District Plan provide the context for the assessment of effects. They provide an indication of the level of effects that are anticipated and considered appropriate within specific areas/zones within the district. With this in mind, the scale and significance of the District Plan non-compliances associated with this proposal indicates to me that the landscape, amenity and urban design effects associated with the proposal are significant, are not anticipated by the Plan or the community who had important input into the provisions through an Environmental Court appeal, and clearly more than minor.

The land use effects associated with allowing higher building coverage within smaller lots and increasing the allowance of impervious surfaces per lot, I consider the effects will result in adverse effects associated with amenity and urban design that are more than minor. The

landscape amenity and urban design effects of the proposed earthworks activities within the neighbouring portion of the Hilltop Reserve are also considered to be more than minor.

Even though the proposal is considered to be consistent with a number of the relevant plan provisions, it was concluded that, on balance, the proposal is contrary to a number of objectives and policies that I consider to be fundamental in the context of what the District Plan is trying to achieve within the Te Kauwhata West Living Zone; being those provisions which seek to create high amenity developments, retain the existing Te Kauwhata Village character and retain the natural landform under Chapters 1A, 13 and 15A. The provisions within these chapters (including the reasons and explanations), provide clear direction that density of development, the number of rear lots, and the extent of earthworks and retaining across the site can contribute to reduced amenity of a location. In regard to these matters, I consider that the outcomes on the environment arising from the proposal not meeting these objectives and policies are significant and far outweigh those objectives and policies that can be met by the proposal.

In terms of section 104(1)(c), I have concluded the proposal will undermine the integrity of the District Plan, and will create a precedent effect if consent is granted.

In consideration of Part 2 matters, I concluded that the proposal would not achieve the purpose of the Act because the applicant could not demonstrate that the activity could be undertaken in such a way that sustainable management of natural and physical resources could be achieved whilst providing for the health and safety of people and communities by avoiding, remedying or mitigating the adverse effects of the activities on the environment.

Balancing competing judgements regarding the effects that are minor vs the effects that are more than minor and the judgements regarding the whether or not the application is contrary or not contrary to relevant plan provisions and the judgements relating to Part 2 matters, I consider that the fact that the proposal has the potential to generate significant adverse amenity, landscape and urban design effects that this tips the balance to refuse the application.

15 RECOMMENDATION

On the basis that the:

- (a) landscape, visual amenity and urban design effects associated with significant non-compliances relating to:
 - (e) reduced minimum and average lot sizes;
 - (f) a higher density development than anticipated by the District Plan;
 - (g) an increased number of rear lots;
 - (h) non-compliant building platforms;
 - (i) lots unable to accommodate a permitted dwelling;
 - (j) the extent of the earthworks and re-contouring of the site;

are more than minor; and

- (b) the proposal is contrary with fundamental plan provisions; and
- (c) that the proposal does not promote the purpose of the Act,

it is my recommendation that the proposal should be refused in reliance on 104D, 104(1(a) and (b) and Part 2 of the Act.

However, if the Commissioner does not agree with my assessment under Section 104D, 104(I) or Part 2 and considers that the proposal can be granted, I have provided a draft suite of conditions for consideration.